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REPORT
OF THE
DIRECT TAXES ADMINISTRATION
ENQUIRY COMMITTEE

1958-59



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DIRECT TAXES ADMINISTRATION
ENQUIRY COMMITTEE,
CENTRAL REVENUES BUILDING,

Indraprastha Marg,
New Delhi, the 30th November '59
9th Agrahayana, 1881 (Saka).

No. DTAEC-59/Ch./2222

From

Shri Mahavir Tyagi, M.P.
Chairman, Direct Taxes Administration
Enquiry Committee, New Delhi.

To

Shri Morarji Desai,
Finance Minister,
New Delhi.

Dear Sir,

I have great pleasure in forwarding herewith the Report of the Direct Taxes Administration Enquiry Committee appointed by the Government of India under its resolution No. 4(59)-58. TPL dated 3rd June, 1958.

2. It will be seen that one of the members, Shri G. P. Kapadia, has submitted a note of dissent. On going through it, the Committee noted that in several places, references had been made to evidence, documents or information which were obtained by the Committee after giving an assurance that they would be treated as confidential and would not be published. The Committee considered that the publication of such material would be a breach of faith and it, therefore, decided that such references should be expunged from the note of dissent. The portions so expunged from the note of dissent have been indicated by asterisks.

3. Shri Kapadia has appended to his note of dissent a pamphlet on the taxation of income on joint stock companies published by the Indian Merchants' Chamber, Bombay and also a printed letter from the same Chamber. The Committee was of the view that as these were printed documents, they should not be allowed to form part of the Report.

4. Since the note of dissent was likely to create a wrong impression about the main Report, the other members of the Committee wanted to add a rejoinder on several points, but on my advice they dropped the proposal. I, however, feel that I must draw your attention to the following important point raised by them.

5. Shri Kapadia's interpretation of the terms of reference and consequently his approach to the enquiry, were different from those of all the other members of the Committee. In his note of dissent, he has discussed such topics as the abolition of the Expenditure-tax, the raising of the minimum taxable limit, rates and incidence of taxation and has made recommendations thereon. As explained in para. 5 of the Introduction to the main Report, all the other members of the Committee were of the view that such questions were clearly outside the terms of reference. In this connection, I would invite a reference to your letter No. 1447-FM/58 dated 19th October 1958.

Yours faithfully,
Sd/- Mahavir Tyagi.

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INTRODUCTION

This Committee was appointed by the Government of India in pursuance of Resolution No. 4(59)/58-TPL dated the 3rd June, 1958, the main part of which reads as under:—

Appointment and terms
of reference

“The Government of India have had under consideration for some time the question of having an efficient system of direct taxation which will be sufficiently broadbased and will also be determined according to the capacity to pay. With a view to achieving this end, necessary legislation has been undertaken recently to impose taxes on wealth, expenditure and gifts and the exemption limit for payment of income-tax has also been reduced. The integration of the tax structure has thus been completed so far as legislation is concerned.

2. The entire work in connection with the assessment and collection of these taxes has fallen on the Income-tax Department. This Department was organised for the assessment and collection of income-tax only. In recent years, it has been expanded to take on the new burdens but it is necessary to ensure that the administrative organisation and procedure are such as would secure the basic objectives of the present taxation policy. It is equally important that the administrative machinery should be effective in checking evasion of taxes and function without giving any scope for public complaint.”

2. The Committee consist of:—

Chairman

Shri Mahavir Tyagi, M.P.

Members

Shri Rajendra Pratap Sinha, M.P.

Shri B. M. Gupte, formerly a Member of Parliament.

Shri G. P. Kapadia, formerly President, Indian Merchants' Chamber, Bombay.

Shri K. S. Sundara Rajan, Member, Central Board of Revenue.

Secretary

Shri F. H. Vallibhoy, Commissioner of Income-tax.

3. The terms of reference to the Committee were:—

“To advise Government on the administrative organisation and procedures necessary for implementing the integrated scheme of direct taxation with due regard to the need for eliminating tax evasion and avoiding inconvenience to the assesseees”.

4. Even in the initial stages of our enquiry, we felt that it would be necessary to suggest modifications in the substantive provisions of the various direct taxes Acts for securing the objectives set before us. On a specific reference made by us, the Government clarified that the terms

of reference permitted the Committee to suggest changes in the substantive provisions of the statutes so far as they related to the administration, organisation and machinery necessary for implementing the scheme of direct taxes. Copies of the letters exchanged between the Chairman and the Finance Minister, in this connection, are given as Appendix I to this Report.

5. During the course of our enquiry, representations were made to us by many with regard to matters like the optimum rate of tax that could be levied and other questions relating to the incidence of taxation, raising of the exemption limit for income-tax, the rationale of a tax on expenditure, scope for integrating gift-tax with estate duty and the bringing into the tax orbit of the Central Government, income from agriculture. We have refrained from giving our opinion on them because they are all matters which have a bearing on the general taxation policy of the Government and as such fall clearly outside our terms of reference. We have, therefore, confined our attention, in the main, to the organisational and procedural matters and wherever we have suggested changes in the substantive provisions, they represent modifications which, in our opinion, have a direct bearing on the question of elimination of tax evasion or avoiding inconvenience to taxpayers.

6. Under the Resolution of appointment we were required to submit our Report before 31st March, 1959. However, we have had to approach the Government for extension of time. We had originally fixed 31st of October, 1958 as the date by which replies to the questionnaire should be submitted but, in view of the numerous requests persistently made for extension of the date, it became necessary to wait for a further period of time to get all the replies. Some time had also to be spent on the recording of evidence. Thus, the first ten months had been utilised wholly for the collection of memoranda and the written and oral evidence. As the pace of enquiry progressed, it became apparent that the sifting of the evidence collected, the detailed discussion and formulation of decisions on the various controversial problems and the drafting of the Report would take more time than anticipated and we had, therefore, to request for extension of time. We are grateful to the Government for agreeing to extend time upto 30th November, 1959.

7. There had been a number of important enquiries with regard to the income-tax administration in India, previously. Of the previous enquiries mention may be made, in particular, of those conducted by:—

Background of enquiry

- (1) the Income-tax Enquiry Committee (1936),
- (2) the Income-tax Investigation Commission (1948), and
- (3) the Taxation Enquiry Commission (1954).

Their reports were of considerable advantage to us.

8. The need for the present enquiry has been succinctly explained in the Resolution of appointment itself. We were assigned the task of suggesting the administrative organisation and procedures necessary for the achievement of the twin objectives of elimination of tax evasion and avoidance of inconvenience to assesseees. At first sight, these two objectives might appear to be directly opposed to each other inasmuch as no effective checking of tax evasion is possible without making detailed enquiries some of which at least are bound to cause inconvenience to the

assessee. But the success of any tax administration ultimately depends on the degree to which it is able to achieve both the objectives. The manner in which a tax administration secures the legitimate dues of the State by eliminating evasion on the one hand and avoiding harassment to assessee on the other determines its true quality and efficiency.

9. At the beginning of our enquiry, we felt that it would be useful to elicit the views and suggestions from the public with regard to particular problems which they wanted us to consider in detail provided they were relevant for the purposes of our enquiry and fell within our terms of reference. With this end in view, we issued a press note on 18th June, 1958 inviting a general statement of views from individuals and organisations on the various matters. The memoranda submitted in response to the questionnaire, helped us greatly by highlighting the various problems arising in the administration of the direct taxes. Altogether, 380 persons responded to our press note and their names appear in Appendix II to this Report. Our questionnaire was published on 30th August, 1958. It was divided into 9 parts viz., administration, assessments, refunds, appeals, collection and recovery of taxes, tax evasion, public relations, integrated tax structure and general and contained 112 questions. Copies of the questionnaire were sent to a large number of individuals, both official and non-official and Members of Parliament, trade organisations, other associations, universities and public libraries. They were sent to persons both in India and abroad. A supplementary questionnaire consisting of 32 questions on specific issues was also issued to the Central Board of Revenue, officers of the Department and staff associations. Altogether, 9,931 copies of the questionnaire and 1,282 copies of the supplementary questionnaire were issued. In all, 535 individuals and organisations sent replies to the questionnaire. Besides, we also received informative notes on particular points, relating to the problems covered by our enquiry, from individuals as well as organisations. Copies of the questionnaire, the supplementary questionnaire as well as the list of persons from whom replies and notes were received appear as Appendices III and IV to the Report. We also addressed an additional questionnaire to the Central Board of Revenue containing 45 questions for eliciting detailed statistical information on particular points and the information so gathered has been utilised in the various chapters of our Report.

10. We held meetings from time to time, in all for 105 days, including 36 days spent in the recording of oral evidence between December 1958 and April 1959. We visited a number of places for the recording of evidence. In the course of such visits, we met representatives of the State Governments including Chief Ministers, Finance and Revenue Ministers and their senior officers as well as the representatives of all the leading Chambers of Commerce, trade and other associations. We also met a number of persons with special knowledge and experience of taxation including Members of Parliament, leading Advocates and Chartered Accountants, eminent Economists, senior officers of the Central Government including many from the Department. The tour was also utilised for holding informal discussions with Chambers of Commerce and other organisations as well as the officers of the Department, studying the actual working of income-tax offices and visiting the 'centres of training for the Central Government officers. The list of persons who gave oral evidence appears as Appendix V to this Report.

11. While on a private visit to U. K., Shri R. P. Sinha, one of our members, had discussions with the senior officials of the Board of Inland

Revenue on the methods, procedures and problems relating to the administration of direct taxes in that country. The information obtained by him has been very useful to us for the purposes of this Report.

12. Our Report is divided into 9 Chapters. In the first chapter, we have discussed in brief the evolution of the integrated

Plan of the Report structure of direct taxation and made general observations on certain matters which attracted our attention.

We have divided our discussion on problems relating to assessments into two parts. In Chapter 2 which constitutes the first part, we have dealt mainly with procedural matters. In the second part, which appears as Chapter 3, we have dealt in detail with specific problems like taxation of income, or wealth accruing abroad which cannot be remitted into the country, depreciation allowances and development rebates, allowance of bad debts, levy of tax on the undistributed profits of companies, registration of firms, re-opening of assessments, taxation of non-resident on the basis of business connection and the problems in valuation of assets arising under the different direct taxes Acts. In Chapter 4, we have dealt with appeals and revisions. We have examined the suggestions made to us with regard to the personnel, methods and procedures of work, appeal rights as well as certain specific problems and given our recommendations with regard to each of them. In Chapter 5 which deals with collection and recovery of tax, we have commented on the arrear position and also made suggestions for the improvement on the present system of effecting collection and recovery both through changes in law and otherwise. In Chapter 6, we have dealt with refunds. Though, generally speaking, all our recommendations have been made bearing in mind the need for eliminating tax evasion and minimising inconvenience to the assessee, we have devoted one chapter—Chapter 7—exclusively for a discussion of special measures necessary for checking tax evasion and avoidance. In Chapter 8, we have critically examined the present administrative set up and made recommendations for improving it in many respects. In Chapter 9, which is the last chapter, we have dealt with the problem of public relations.

13. We desire to record our deep sense of appreciation and gratitude to all the individuals, Associations, Chambers of Commerce and other

Acknowledgments Organisations who have rendered us valuable assistance by tendering written and oral evidence as well as providing opportunities for our meeting them for informal discussions. Our special thanks are due to the Members of the Lok Sabha and the Rajya Sabha who found it convenient to attend before us and give their views on many an intricate problem. To the State Governments and their officials, we wish to express our gratitude for the help rendered in many ways, including arrangements for our stay. We are grateful to the Central Board of Revenue for the facilities afforded to us and the information furnished from time to time. We are indebted to Prof. Nicholas Kaldor who, while on his way to Ceylon, found it possible to break his journey to meet us and to give us the benefit of his knowledge. We express our sincere thanks to the Board of Inland Revenue and, in particular, to Mr. Ernest Roy Brookes, for the assistance given to Shri R. P. Sinha during the course of his visit to U.K. To the Commissioners of Income-tax, the officers and the staff of the Income-tax Department, we are thankful for their full co-operation and the assistance rendered to us.

14. We are deeply indebted to the Secretary, Officers and Staff of the Committee for the competent and enthusiastic manner in which they

discharged their respective duties. Our Secretary, Shri F. H. Vallibhoy, rendered us invaluable assistance at all stages of the enquiry by bringing to bear on the work not merely his wide knowledge and experience of direct taxes administration, law and procedures, but also by a high degree of administrative and organising efficiency. In particular, the systematic arrangements made for the recording of evidence and minutes, the preparation and circulation of notes and other papers left nothing to be desired. The Officers on Special Duty, Sarvashri R. S. Mani, D. N. Chaudhri, L. R. Jain and C. Balakrishnan were of great help to us in elucidating the numerous problems that arose from time to time during the course of our enquiry. We are grateful to them and to the staff for their untiring zeal and the extremely arduous labours put in.

CHAPTER 1

GENERAL

The system of direct taxation is not new to India. There are references both in Manusmriti and Arthashastra to various taxes. Thus, the State's share of the income from the land was fixed in normal times between 1/12th and 1/6th depending upon the quality of the soil and the amount of labour expended on cultivation. In Kautilya's Arthashastra, mention is

Evolution of the integrated tax structure made of a large number of sources of revenue like profits from crown lands (Sita), portion of profits payable to the government (Bhaga), religious taxes (Bali), taxes paid in money (Kara), road cess etc. (Vartani), capital (Mula), premia (Vyaji), and fixed fines (Atyaya). Reading through his exhaustive and penetrative discussions on how a King should avoid keeping his subjects waiting unnecessarily for audience, or the forty ways in which the revenue of the State was capable of being embezzled, or the manner in which the State could encourage informers through rewards ensuring, at the same time, avoidance of the growth of unscrupulous black-mailers, or the grant of remissions of tax on emergent occasions, or the way in which the validity of accounts and the truth regarding income, wealth or expenditure of the citizens should be ascertained by agents who would go around and make discreet enquiries, a modern reader can easily persuade himself to believe that the discussion is of the present day problems.

1.2. Before the advent of the British rule, apart from land revenue, there were different types of direct taxes in the different regions of India. But it was land revenue which dominated the scene. The British continued most of these levies for sometime but gave them up progressively. For a period, with the exception of land revenue, there were no other direct taxes in the country.

1.3. Income-tax was introduced for the first time in 1860, but it was only in 1886 that it became a permanent feature of the Indian tax system. The Act of 1886 continued until 1918 with a number of amendments, the important changes effected during the period being the introduction of the principle of graduation in income-tax in 1916 and of Super Tax in 1917. In 1918, a new Income-tax Act was passed repealing all previous Acts. This Act remained in force upto 1922 when owing to the reforms brought about by the Government of India Act, 1919, which made income-tax a Central subject, a new Act (Act XI of 1922) was passed. This Act has continued to be basis of the Indian Income-tax system down to the present day though it has been amended considerably since 1922—notably by the Amendment Act of 1939. With the transfer of land revenue to the Provinces, income-tax was the only direct tax levied by the Central Government continuously until 1953 when estate duty was introduced. With the enactment of the Wealth-tax and Expenditure-tax Acts in 1957 and the Gift-tax Act in 1958, the present integrated structure of direct taxation came into being.

1.4. At present, the direct taxes levied by the Central Government are all administered under separate statutes. Though the Acts differ fundamentally from each other as regards the base of tax, the rates of levy etc., a good deal of uniformity in the procedures relating to matters like assessments, appeals and collections already exists. It was suggested to us that it

Integrated Tax Code

would add considerably to the convenience of both the Administration and the taxpaying public, if these statutes are administered under one common code. *However, we feel that until such time as the Department and the taxpaying public gain sufficient experience of the working of the existing statutes, the present position may be allowed to continue.*

1.5. It was suggested to us that in the place of the present system of having different returns in which assessee are required to declare their income, wealth, expenditure and gift for tax purposes there should be one comprehensive return. *In our opinion, it is not worthwhile to introduce a system of assessment on the basis of such a comprehensive return because the liability under the different Acts does not arise in all cases. Even with regard to cases of assessee who are liable to more than one tax no additional benefit might accrue merely from the introduction of a comprehensive return.* We feel that the purpose would be served if the assessments of persons liable under the different direct taxes Acts are, as far as possible, completed simultaneously. Such a procedure would add to the convenience of the taxpaying public. At the same time, it would help the Department in utilising the self-checking character of the information available in the various returns and statements.

1.6. It was also pointed out that difficulties had been experienced under the existing system because of the different designations given to the assessing authorities. At present, the direct taxes levied by the Central Government are all administered by the Income-tax Department. The Income-tax Officer, who is the assessing officer under all the direct taxes Acts, has to sign his orders as Wealth-tax Officer, Expenditure-tax Officer or Gift-tax Officer, as the case may be. Similarly, the Inspecting Assistant Commissioner of Income-tax or the Appellate Assistant Commissioner of Income-tax or the Commissioner of Income-tax, while passing statutory orders under the other direct taxes Acts, has to sign them as Inspecting Assistant Commissioner of Wealth-tax, Inspecting Assistant Commissioner of Expenditure-tax, Inspecting Assistant Commissioner of Gift-tax, or Appellate Assistant Commissioner of Wealth-tax, Appellate Assistant Commissioner of Expenditure-tax, Appellate Assistant Commissioner of Gift-tax, or Commissioner of Wealth-tax, Commissioner of Expenditure-tax, Commissioner of Gift-tax, as the case may be. All these cause a good deal of confusion in the minds of the public. We feel that the adoption of a common designation for the authorities administering the Acts will help to avoid this difficulty. *We, therefore, suggest that the designation of the assessing officers under all the direct taxes Acts may be changed to 'Direct Taxes Officers' and the designation of the other authorities to Appellate Assistant Commissioner of Direct Taxes, Inspecting Assistant Commissioner of Direct Taxes, Commissioner of Direct Taxes and Direct Taxes Appellate Tribunal. It is also necessary to change the designation of the Income-tax Department into the 'Direct Taxes Department'.*

1.7. At this stage, we consider it necessary to make a few general observations on certain features of the Administration which came to our notice in the course of our enquiry.

1.8. A feature which attracted our attention was that changes were being effected in the tax laws rather too frequently. *In recent years, there have been numerous changes in the tax base, the rates of tax as well as methods of assessment. These changes are effected either with a view to varying*

the incidence of taxation or to rectify lacunae in the tax laws. Yet we consider that if such frequent changes were not effected in the tax laws, it would add to the efficiency of the Administration. As the officers have to spend considerable time in keeping themselves upto-date with the changes in the law, it interferes with their normal duties. When the law is modified too frequently, the officers also find it difficult to remember which specific provision was applicable for a particular year. *Therefore, frequent changes in the statutes should be avoided.*

1.9. Another suggestion we have to make in this context is with regard to the present method of effecting changes in the tax laws through the Finance Acts. *We are of opinion that all the substantial changes in the law should be effected, as far as possible, through specific amending Acts which would provide opportunities for detailed consideration by the Parliament.*

1.10. A suggestion which was made to us by almost all the witnesses was with regard to the need for simplification of the taxing statutes. This is a demand which had been pressed before every committee, not only in India but also abroad. The task is in no way an easy one as it is not possible to draft statutes in a simple language and comprehensive enough to cover the vast multitude of economic pursuits of the tax payers. *But there is no doubt that if changes in statutes are reduced to the barest minimum and the provisions are arranged more logically and expressed in clearer language, much of the existing ambiguity would disappear.* We find that the Law Commission has prepared a redraft of the Income-tax Act, largely fulfilling these requirements.

1.11. During the course of our enquiries we gained the feeling that though the taxpayers were aware of the problem of tax evasion and avoidance in a general way, their attitude towards it was one bordering on indifference. *A great deal of effort, therefore, seems to be required on the part of the public men and leaders of society to arouse public conscience in this respect and bring about a healthy outlook and create a proper climate of opinion.* We have discussed this aspect of the problem in detail in the Chapter on Evasion and Avoidance. Much depends also upon the maintenance of good public relations by the Administration and we have stressed its importance throughout our Report.

1.12. The extent of mutual distrust which seems to exist between the Administration and the taxpayers has caused us great concern. *We consider that unless the assessee's faith in the efficiency, impartiality and sense of justice of the administration is restored, no amount of legislation by itself would improve the present state of affairs.* The Department should, at all times, display an intelligent and sympathetic concern with the problems of the assessee. This requires that the assessee's understanding of particular tax measures should be improved, the inconvenience caused to them minimised and their complaints enquired into more promptly and sympathetically than at present. While the taxpayers have their responsibilities in this regard, the manner in which they are discharged depends, to a great extent, on the treatment which assessee receives at the hands of the authorities.

1.13. Another aspect to which we desire to draw particular attention is the need for a larger degree of co-operation between the various governmental agencies at the Centre and the States.

Co-operation between
the Central & State
Governments

The Income-tax Department of the Central Government and the Sales Tax Departments of the State Governments, for example, can be of great help to each other through a systematic exchange of information relevant to the assessments by either authorities. We are dealing with this aspect in greater detail in the Chapter on Evasion and Avoidance.

1.14. In addition to serving the primary purpose of providing sufficient revenues to the State, taxes have come to be recognised as an instrument through which the social and economic objectives of a welfare State could be achieved. They are utilised now for providing incentives for larger earnings and more savings, fostering industrial development by selective concessions, restraining ostentatious expenditure, checking inflationary pressures and achieving social objectives like reduction of inequalities and enlargement of opportunities to the common man. The extent to which these objectives are secured depends largely upon the degree of efficiency attained in the administration of the taxes. The efficiency of administration becomes all the more important in the context of the economic development which is taking place in the country as a result of the Plans. While taxation provides the resources for the Plans, taxes themselves are, in turn, influenced by the results flowing from the Plans. The improvements in the economy of the country will be reflected increasingly, in the coming years, in the total amount of income and the value of assets that would come up for taxation. There will also be a substantial increase in the total number of taxpayers. *In such circumstances, it is essential that proper measures should be taken, well in advance, to enable the State to secure its due amount of taxes. The administration of taxes has to be so geared that the State is able to collect the taxes in full without causing any undue inconvenience to the assesseees.* Our recommendations which follow in the subsequent chapters are aimed at achieving these ends.

Conclusion

CHAPTER 2

ASSESSMENTS—I

PROCEDURES

INTRODUCTORY

2.1. Assessment represents the first stage in the administration of a taxing statute when the taxpayers come into direct contact with the Department. The term 'assessment' refers to the computation of income, wealth, expenditure, gift or estate for tax purposes as well as the determination of the amount of tax payable. For the success of the Administration, it is essential that the assessments made are just and fair and that they are completed without avoidable delay. Any laxity, in either the standards of fairness or the speed with which the assessments are completed, could lead to difficulties for both the assessee and the Department. Not only do timely and just assessments contribute to good public relations, but they also enable prompt collection of the taxes levied and minimise the chances of evasion. We examine, in this Chapter, the various modifications that are necessary in the procedures of assessments to secure both these objectives.

TOTAL QUANTUM AND ARREARS OF ASSESSMENTS

2.2. From the statistics furnished to us by the Central Board of Revenue, we find that a large number of arrear assessments are carried over from year to year. It is these arrear assessments which are responsible for the growing arrears of taxes and the consequent criticism of the Department. We analyse in the following paragraphs the total quantum of assessment work under the various direct taxes Acts, with special reference to arrear cases.

2.3. The figures of income-tax assessments for disposal and those completed during each of the last five years are given in table I.

Table—I *Progress of disposal of Income-tax assessments.*

Financial year	No. of assessments for disposal	No. of assessments completed			No. of assessments pending at the end of the year
		Out of current	Out of arrears	Total	
1	2	3	4	5	6
1954-55	15,52,931	6,04,241	3,39,212	9,43,453 (60.7%)	6,09,478
1955-56	14,52,960	4,81,194	4,09,934	8,91,128 (63.2%)	5,39,832
1956-57	13,98,954	5,27,108	3,96,157	9,23,265 (65.2%)	4,75,689
1957-58	14,43,997	5,83,590	4,19,161	10,02,751 (69.4%)	4,41,246
1958-59	15,87,228	7,04,775	4,26,581	11,31,356 (71.2%)	4,55,872

[Figures shown in brackets in Col. 5 represent percentage of cases disposed of to total number of assessments for disposal.]

It would be observed from the above table that the number of assessments completed during any of these years, expressed as a percentage of the

total number of assessments for disposal, has been continuously on the increase and, in consequence there has been a gradual reduction in the number of arrear assessments carried over from one year to another except during 1958-59 when there is a slight increase. Still the number of arrear assessments is very large and it represents about six months' work-load at the present rate of disposal. It would also be noticed that the number of assessments for disposal has shown a tendency towards increase specially marked since 1957-58. This is presumably because of lowering of the minimum taxable limit and increased surveys—internal as well as external. This increase is likely to continue in the future as well. Even though the number of assessments disposed of during 1958-59 was the maximum during this entire period, there is also an increase in the number of assessments pending disposal at the end of that year, as compared to the immediately preceding one. Unless immediate steps are taken for a more substantial improvement in the rate of disposal, the number of assessments remaining pending at the end of any year would tend to increase.

2.4. A further analysis of the assessments disposed of during the year and those remaining pending at the end of the year according to the categories of cases, has been made for the last five years. The relevant analysis is shown in Table 2.

Table 2. *Analysis of disposed of and pending assessments according to categories of income.*

Year		Cases with business income exceeding Rs. 25000 (Category-I)	Cases with business income above Rs. 10000 but not exceeding Rs. 25000 (Category-II)	Cases with business income above Rs. 5000 but not exceeding Rs. 10000 (Category-III)	Cases with business income upto Rs. 5000 & non-business cases (excluding salary) with income above taxable limit. (Category-IV)	Cases not covered by the other categories, largely salary cases (Category-V)	Total
1954-55	D.	69002	113031	169121	153673	438626	943453
	P.	53016	69293	110472	171278	205419	609478
1955-56	D.	68692	122268	184430	177654	338084	891128
	P.	50872	66647	99603	135399	187311	539832
1956-57	D.	69073	129292	194398	175331	355171	923265
	P.	46382	58641	84259	114892	171515	475689
1957-58	D.	76864	142928	217219	209606	356134	1002751
	P.	40100	53275	82229	108005	157637	441246
1958-59	D.	79948	155421	251115	262578	382294	1131356
	P.	38553	52832	82574	114209	167704	455872

NOTE : D. represents the number of cases disposed of during the year.

P. represents the number of cases pending at the end of the year.

The table shows that the bulk of the disposal is accounted for by comparatively lower income cases which do not yield much revenue and involve less difficulties and complications. It also shows that the pace of disposal in the Category—I cases, in which the business income content is in excess of Rs. 25,000, is proportionately lower, although these cases contribute the bulk of the revenue. This is perhaps due to the fact that these cases involve considerable investigational work which has to be carried over a period of time. We feel that so long as the modes and procedures for assessments of various types and categories of cases remain the same, the tendency to take up easier work earlier will persist. It would further be observed from the above table that the number of cases in the lower groups has lately registered a considerable increase in the later years due, no doubt, to the lowering of taxable limit from Rs. 4,200 to Rs. 3,000. We are of the view that no real headway could be made in the clearance of arrear assessments, particularly those of higher category cases, unless the modes and methods of assessment are substantially modified.

2.5. The position regarding estate duty cases is summed up in the following table.

Table 3.—*Progress of disposal in estate duty assessments.*

Financial year	1954-55	1955-56	1956-57	1957-58	1958-59
(a) No. of cases for disposal	3,527	6,822	10,074	11,065	10,779
(b) No. disposed of	1,486	3,315	6,235	8,185	7,664
(c) No. pending at the end of the year.	2,041	3,507	3,839	2,880	3,115

The pendency in these cases represents some five months' workload. When the Estate Duty (Amendment) Act, 1958 is brought into force and the minimum dutiable limit of the estate is reduced from Rs. one lakh to Rs. 50,000, there will be a large increase in the number of small estate duty cases.

2.6. The position regarding Wealth-tax assessments may be seen from the following table.

Table 4.—*Progress of disposal of Wealth-tax assessments.*

Financial year	1957-58	1958-59
(a) No. of cases for disposal ¹	37,906	56,667
(b) No. disposed of	19,190	44,077
(c)*No. pending at the end of the year	18,716	12,590

In the first year, the disposal was low because, beside being a new tax, the Act itself was passed during the middle of the year. The second year shows an improvement.

2.7. The Gift-tax and the Expenditure-tax Acts came into force only in 1958-59. The figures of disposal of assessments under these Acts, in that year, are given below:—

Table 5.—*Progress of disposal of Gift-tax and Expenditure-tax assessments*

	Gift-tax (1958-59)	Expendi- ture-tax (1958-59)
(a) No. of cases for disposal	7,039	7,774
(b) No. disposed of	4,778	5,768
(c) No. of pending at the end of the year	2,261	2,006

Considering that this was the first year of administration of these two new taxes, the disposal of assessments has not been unsatisfactory.

2.8. The preceding paragraphs give an idea of the present volume of the assessment work under the various direct taxes Acts, and the extent to which the Department has been able to cope up with it. Although it has been making determined efforts to reduce the pendency of assessments, much still remains to be done, because with even a slight relenting of efforts the arrears will again start mounting. So far as we can visualise there will be a continuous increase in the workload of the Department in the coming years due to numerous factors, such as increasing level of developmental expenditure, the lowering of taxable limits both for income-tax and estate duty and intensification of the survey work. Though it is not possible to estimate, with any high degree of accuracy, the extent of the likely increase, according to a rough estimate given to us by the Central Board of Revenue, the number of income-tax assesseees is likely to increase from 9,33,277 as on 1st April, 1959 to about 12 lakhs in a period of five years from then. It is imperative, therefore, that the Department should constantly bring to bear a sense of urgency on the question of disposal of assessments and, in particular, the liquidation of arrears. *Its endeavour should be to complete all assessments, as far as possible, in the assessment year itself and, save in exceptional cases, no assessment should remain pending for more than two years.*

MEASURES FOR EXPEDITING DISPOSAL

2.9. We now proceed to examine the various factors which cause delay in the disposal of assessments and discuss measures for securing their speedy completion.

2.10. Delay in the filing of returns under the Income-tax Act is one of the most important causes of arrears of assessments as well as arrears of taxes. We note that the existing provisions in the Income-tax Act relating to the issue of statutory notices for the filing of returns, the absence of any automatic statutory time-limit therefor and the free use of discretionary powers in granting extensions of time are largely responsible for these delays. Quite a number of assesseees do not file their returns for a considerable period merely by applying repeatedly for extensions of time on one pretext or another. The solution to this problem

Delay in the filing of
returns.

would be to specify, in the Income-tax Act itself, a definite date by which the assessee should be required to file their returns, as is now obtaining under the other direct taxes Acts. The position is, however, complicated by the fact that the assessee follows different accounting years as 'previous years'. There are more than a dozen of such accounting years in vogue in different parts of the country and, as assessee attaches considerable importance and even sanctity to their respective accounting years, it is not possible to insist on a common accounting year for all assessee. Further, to require all assessee having different accounting years to file the returns by a particular date would not be equitable because the assessee having the financial year as their accounting year would get much less time than those following the Samvat year or Diwali year. We are aware that, in business cases, some time has necessarily to be allowed for the closing of the accounts, the preparation of trading and profit and loss accounts and balance sheets as well as for the audit of accounts in the case of companies. But, even so, we do not see why a statutory date should not be fixed by which the returns should be required to be filed. We therefore, recommend that assessee having income from business, profession or vocation should be statutorily required to file their returns of income within four months after the close of accounting year or by 30th June following that year whichever is later. For all other assessee the last date for the filing of returns should be 30th June, regardless of their accounting year. In doing so, the Department would be adopting a practice which is in force in several other countries including Canada and U.S.A.

2.11. The time-limit that we have proposed should be sufficient in the vast majority of cases, though there could be some exceptional cases where, due to unavoidable reasons, it may not be possible for assessee to file returns within the prescribed time. We, therefore, suggest that the discretion of assessing officer to grant, in suitable cases, extension of time for filing of returns should continue. In cases where the accounting period for business, profession or vocation ends after 31st December, the assessing officer should be empowered to grant suitable extensions of time on his own upto a date not exceeding beyond a period of six months from the end of the accounting year. In any other case, extension should be granted by him only after obtaining the previous permission of the Commissioner of Income-tax and on conditions which might include the furnishing of adequate security for the tax due. Assessee should be required to apply for extension of time in a prescribed form, undertaking to pay, for the period of extension, interest at six per cent per annum of the tax that may become due on assessment. The levy of such an interest in all cases of extension should be compulsory and should be statutorily laid down. If the assessing officer feels that the extension of time is not justified, he may himself reject the application. With the prior permission of the Commissioner, he should also be able to curtail the period of extension, after giving notice to the assessee, if such curtailment is found necessary. No appeal should lie against the orders of the assessing officer refusing to extend the time asked for. Assessee who do not file the returns by the prescribed date or the extended date should be subjected to deterrent penalties which should vary according to the period of default. We believe that if the statute is amended as suggested by us, the dilatory tactics of assessee would be effectively checked and there would be an even flow of returns into the various assessment circles.

2.12. Section 22(1) of the Income-tax Act which provides for the publication of a general public notice was introduced in its present form in 1939 when extensive changes were made in the Income-tax Act, one

of which placed the statutory liability for filing returns on the taxpayers themselves. Since it was a fundamental change, it was considered necessary to remind the tax-payers, every year, of their responsibility in this matter, before their returns became due. This provision has been in force for over twenty years now and most of the assesseees have become aware of their obligation in this regard. We are told that the statutory requirement of having to issue notices annually in the elaborate manner prescribed, with all its attendant formalities, is acting as a drag on the income-tax administration and is partly responsible for the delay in assessment. The annual cost of publishing this notice in the various newspapers comes to about Rs. two lakhs. Such a notice has few parallels in other countries and even in our country, there is no provision for the issue of such a public notice in any of the other direct taxes Acts. Some witnesses were, however, of the opinion that the publication of this notice should continue because it had a definite psychological effect, inasmuch as it reminded the taxpayers that the assessment year had commenced, and that the returns should be filed within the prescribed time. While we appreciate the force of this point, we do not feel that it is necessary, for this purpose, that the notice should be issued in its present elaborate manner with the name, designation and jurisdiction of each Income-tax Officer in the country. *Hence we recommend that the statutory provision for the issue of a general public notice should be deleted. Instead, a simple advertisement should be issued in the beginning of each assessment year, reminding the public about their liability to file their returns under the various direct taxes Acts within the prescribed dates and that failure to do so would attract the penal provisions of the Acts.* Such a notice should get the widest publicity through press, radio, cinema slides, etc. Suitable advertisement plates reminding the taxpayers of the final dates of submission of their returns should also be displayed prominently in places of public resort.

2.13. Section 22 (2) of the Income-tax Act lays down that the assessing officer may, at his discretion, send to any person whose total income, in his opinion is of such an amount as would make the person liable to income-tax, a notice requiring him to submit a return of income, within a specified time (not less than 30 days) from the receipt of such a notice. When this provision was originally introduced in the Income-tax Act in 1939, Government had given an assurance in the Legislature that the Department would continue, as in the past, to issue notices to all assesseees borne on its register. We are informed that the preparation and issue of these notices take considerable time and there are quite a few cases of the existing assesseees who successfully avoid the service of such notices and thereby delay the filing of returns. *We feel that service of such notices by the Department in terms of that assurance should be no longer obligatory, since all existing assesseees have, by now, become familiar with their obligations to file the return. However, as a matter of convenience to the assesseees, the Department should continue to issue the return forms to the existing assesseees, before 30th of April, each year, but the non-receipt of a return form by an assessee should not be made as an excuse by him for not filing the return by the specified date, viz., 30th June, or four months from the end of the accounting year. If a person does not file return within the time limits, or within extended time, he should be considered to be in default as not having filed the return unless he can show that he had applied for a return form to the assessing officer in time and the same had not been supplied to him.*

2.14. We are not recommending, for the present, any change in the provisions of other direct taxes Acts relating to the filing of returns. The

Department may, after it gets sufficient experience of the working of the proposed procedure for income-tax, extend it to other direct taxes.

2.15. We were informed that one of the main reasons for delay in the filing of returns was that the prescribed forms were not made available to the assessing officers well in time for issue to the assessees. This is an unsatisfactory state of affairs. It is essential that returns and notices should be printed well in advance and sufficient copies distributed to tax offices before first April. For this purpose, we are making necessary suggestions in the Chapter on 'Administration'. *The return forms should be sent to the assessee by ordinary post under a general certificate of posting so as to reach them before the 30th April.* To facilitate the early issue of return forms, notices etc., addressograph machines should be provided in the bigger offices and cyclostyled slips giving names and addresses of the assessee should be made available in sufficient quantities to smaller offices. It should be seen that the General Index Registers of the various tax offices contain the latest addresses of the assessee, who should be required to intimate to the assessing officer any change in their address. The changes intimated by the assessee should be acknowledged and incorporated in the registers and record, without any delay.

2.16. We are given to understand that a large number of returns received in the Income-tax Offices were incomplete and defective and these caused delay in the finalisation of assessments. Instructions already exist to the effect that all returns should be subjected to a preliminary scrutiny on receipt and if a return is found to be defective, for one reason or the other, the defect should be pointed out to the assessee through a standardised form. This procedure does not appear to be generally observed. Failure to adhere to this procedure results, sometimes, in adjournment of the cases and considerable inconvenience to the assessee. *We, therefore, suggest that the responsibility for preliminary scrutiny of the income-tax returns should be assigned specifically to the Inspector or Head Clerk, who should maintain a complete record of the checking done. Such a scrutiny should be restricted to pointing out technical defects which have a material bearing on the assessment.*

2.17. Another cause for the delay in assessments that was brought to our notice was that adjournments in the course of assessment proceedings were of frequent occurrence. We were informed that adjournments were sought by assessee, on one pretext or the other and, at times, merely for the purpose of delaying assessment and payment of tax. These requests were, sometimes, made on the day of hearing itself, thereby considerably upsetting the officer's programme of work. On the other hand, it was represented that adjournments were not allowed by the officers even when the circumstances fully justified them. *While we appreciate that proceedings might have to be adjourned on account of genuine difficulties of assessee, adjournments should not be given as a matter of course but granted only where they are justified.* An atmosphere of mutual adjustment and co-operation should prevail in this regard.

2.18. It was represented to us that one of the reasons for adjournments was the fixation of cases without consultation with the representatives of the assessee. It was stated that if cases were fixed after prior consultation with them, there would be fewer adjournments because the representatives would be enabled to adjust their programme in advance and

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make themselves available. *We feel that the assessing officer should have full discretion to fix his programme and that he should have the final say in the matter. Subject to this, there should be no objection to the assessing officers adjusting their programmes for assessment, should the representatives so request.*

2. 19. While on the subject of adjournments, we may refer to the complaint made by some witnesses regarding the late service of notices under Sections 23(2) and 22(4) of the Income-tax Act. It was pointed out that, sometimes, the notices were received as late as the evening preceding the day of hearing or even after the date of hearing. This may be due to delay in service of notices or to their late issue. Adjournments in such cases become inevitable and the assessee is put to unnecessary inconvenience. *We are, therefore, of the view that the assessing officers should give a minimum of eight days' time from the date of service of a notice for its compliance. Suitable control measures should be taken to see that this is strictly observed.*

2.20. There are several reasons for which proceedings are adjourned by the assessing officers, on their own. Although there are administrative instructions, requiring the assessing officer to make a prior study of the records and the returns filed by the assessee before fixing up the appointments and hearing the cases, we understand that these instructions are not often followed in actual practice. At times, the cases are fixed without even ascertaining whether the relevant records are available in the office or have been sent up to appellate or other authorities. Not infrequently, the assessing officers study the records only on the day fixed for the hearing and, sometimes, only when the assessee actually appears. The lack of such prior study and absence of planning in posting cases lead to slipshod work, adjournments for eliciting information piecemeal, inconvenience to assessee and other difficulties. These factors certainly delay assessments considerably and also affect the quality of assessments.

2.21. A reason generally advanced for this lack of planning and prior study was that the assessing officers were over-worked. It was stated that, in addition to assessment work, the officers had to attend to other miscellaneous duties of multifarious character. This is true to some extent and we are suggesting, in the Chapter on 'Administration', various measures to relieve assessing officers of routine administrative duties and rationalise their workload. But that apart, *we would like to emphasise that the need for planning of work and prior study of a case is nowhere greater than in the Income-tax Department.*

2.22. Assessing officers adjourn the proceedings from time to time for obtaining information or making some inquiries. A prior study of the case papers would enable the officer to acquaint himself with the facts already on record and to know what additional information would be required. Wherever possible, information required from the assessee should be obtained by issue of a suitable questionnaire to him before the case is actually taken up for hearing. It was suggested, in this connection, that the forms of the questionnaire to be issued in cases of different trades, industries and professions should be standardised and these should cover all points on which information is likely to be required for assessment purposes. Some complaints were, however, made to us that, at times, elaborate standardised questionnaire were sent to all assessee of a trade, regardless of the fact that most of the questions were not applicable to

the majority of the small and middle income assesseees in that trade. In our opinion, preparation of standardised questionnaire for important industries, trades and professions is a step in the right direction, though the indiscriminate issue of such standardised questionnaire to all assesseees as a matter of course, should be avoided. Their issue should be restricted to big cases only where information of the type referred to in the questionnaire would be relevant to the completion of assessments and required from year to year. Even in such cases the standardised questionnaire should be used only as a basis and not sent *in toto*. As many points as are relevant to the particular case should be culled out from the standardised questionnaire and incorporated in the questionnaire relating to that case.

2.23. Another important feature which came to our notice was that the disposal of assessments was not evenly spread throughout the year. The pace of disposal is markedly lower in the earlier part of the year as compared to the subsequent part, particularly in the last quarter. Assessments in large income cases appear to be made mostly towards the close of the year, as would be obvious from the fact that out of a total demand of Rs. 231 crores raised during 1958-59, a demand of about Rs. 49 crores had been raised in the last month, *viz.*, March, 1959. One of the reasons for the delay in taking up such cases early is, perhaps, the late filling of returns in them. We have made certain suggestions earlier in this Chapter for remedying this situation. But a more important cause for such delays is the lack of a planned programme of disposals for the year. *Advance planning of work is essential for the efficient functioning of the Department. We, therefore, suggest that in the beginning of the year each assessing officer should chalk out a plan of his work for the year. In doing so, due care should be taken that revenue-yielding and arrear cases are taken up sufficiently early in the year, that all pending assessments in a case are taken up together and that the assessments under the various direct taxes Acts in a case are disposed of simultaneously.*

2.24. At present, assessing officers are assigned jurisdiction mostly on territorial basis and they have, therefore, to handle all types of cases falling in the respective areas. Though, from the point of view of convenience to the assessee, this arrangement is satisfactory, it results in uneven attention to different cases imbalance in investigation and consequent delay in assessments. For expeditious disposal and proper assessments, we feel that it is essential that the cases are classified into different groups on the basis of their revenue potential, source of income, investigational work, etc. The Department has been taking various steps in this direction from time to time. Functional Circles have been created in some Commissioners' charges, to which the cases are assigned on the basis of similarity of business, profession or vocation, *viz.*, textile mills, oil companies, jute mills, sugar factories, shipping companies, banks, insurance companies, speculation cases, doctors, lawyers, contractors, film artists etc. Such Circles have the advantage of specialisation and make for quicker disposal and better investigations. *We suggest that this system should be extended and that, wherever there are sufficient number of cases available, functional circles should be organised.* We find that groups of connected cases and cases involving detailed investigations and where substantial evasion is suspected, have been segregated and are being dealt with in Central and Special Circles constituted for this purpose. We are examining their working in the Chapter on 'Evasion and Avoidance'. We

may also refer to the scheme of group Assistant Commissioners introduced in December 1956 in certain Commissioners' charges. Under this scheme, the assessing officers work under the personal guidance of the Group Assistant Commissioner and get their difficulties solved by personal discussions. We are examining this scheme in detail in the Chapter on 'Administration'.

2.25 Many witnesses pointed out that an important reason for the delay in assessments was the inadequacy of staff. We are examining this aspect of the problem also in the Chapter on 'Administration' and making necessary recommendations for securing that assessments are not delayed on account of shortage of staff.

SMALL INCOME GROUP SCHEME

2.26. Income-tax law does not make any distinction between a small case and a big one, so far as the details of assessment procedure are concerned. Although there are administrative instructions that, in cases of small incomes, there should not be a detailed scrutiny of accounts, in actual practice they are not followed, because the responsibility for any omissions or under-assessments in these cases is still on the assessing officer. *The amount of time and energy spent on small cases appears to us to be totally disproportionate to the revenue yields therefrom.* In fact, there is a definite waste of efforts, which, if applied to bigger cases, would yield much larger dividends. *We, therefore, suggest that the time and effort spent on cases of different categories should bear relation to their revenue potential.* For this purpose, the assesseees may be broadly divided into three groups, viz., the small income group with total income upto Rs. 7,500, the middle income group with incomes above Rs. 7,500 but not exceeding Rs. 25,000 and the large income group with total income exceeding Rs. 25,000. We observe that the assesseees in the smaller income group constitute a very high proportion of the total number of assesseees, but their contribution to the total revenues is comparatively insignificant. Figures extracted from the All-India Income-tax Revenue Statistics for the year 1957-58 show that, of the total number of nearly 6,73,000 effective assessments completed during that year which resulted in income-tax demand, those (excluding companies) having assessed income of Rs. 7,500 and below were nearly 3,60,000 in number. Of these, nearly 1,22,000 were pure salary earners and the others 2,38,000. If we add to the latter, another 2,50,000 'no assessment' cases in which the income computed is below the taxable limit but which are on the registers of the Income-tax Department and in respect of which regular assessment proceedings are taken, we arrive at a figure of nearly 4,88,000 which comes to about 50 per cent of the total number of assessments made (including the 'no assessment' cases) in 1957-58. The demand raised in all these small income assessments (excluding purely salary cases) amounted to Rs. 2.40 crores, i.e., a little over one per cent only of the total demand of Rs. 222 crores raised during the year from all assesseees. Thus, the effort put in the assessment of these cases is out of all proportion to the revenue involved. *We are, therefore, of the considered view that the Department must get out of the present grooves and make a bold departure in respect of the assessment of small income cases. We have, accordingly, devised a scheme for assessment of this category of cases which does away with the annual ritual of the full assessment process.* The salient features of this scheme are given in the following paragraphs:

2.27. At the very outset, we would like to mention that this scheme is not to form a part of the statute and should be worked only administratively, within the framework of the existing income-tax law relating to assessments. It follows, therefore, that this scheme should be optional and should apply only to those assesseees who fulfil the income conditions described later and who opt to come within its purview.

2.28. The scheme will apply to all assesseees (excluding pure salary earners) having a total income of Rs. 7,500 or below during the 'previous year', provided (a) they did not have an assessed income of Rs. 10,000 and more during any of the three preceding 'previous years'; (b) they have not been found guilty of concealment in any of the three earlier years; and (c) that the capital invested in the business is not more than Rs. one lakh. This would mean that all new assesseees having income below Rs. 7,500 and capital investment below Rs. one lakh would be included in the scheme. It will also cover those cases of the above-mentioned income ranges in which assessments in earlier years have been made on estimated basis, either under the proviso to Section 13 of the Income-tax Act or otherwise. The scheme will not, however, apply to assesseees returning losses and to non-residents.

2.29. The following procedure should be adopted for assessment in these cases:—
 Procedure of assessment

- (i) Assesseees should be required to file the return in a special form. [See Appendix VI(a)]. This will be accompanied by a wealth statement [See Appendix VI(b)] in the first year of the scheme or the first year of the assessment of the assessee and thereafter every fourth year in which detailed scrutiny would be taken up.
- (ii) To help these assesseees in filling the returns, special staff should be made available in the Income-tax Offices.
- (iii) On receipt of the return, it should be scrutinised on broad lines in the Income-tax Offices to ensure that it is complete and correctly filled in. Necessary entries should be made, thereafter, in the General Index Register. Unless there is specific information with the Income-tax Officer that the assessee had been evading tax*, the Income-tax return should be accepted as correct and the assessment should be made under section 23(1) of the Income-tax Act. The tax on the returned income should be computed as per computation sheet [See Appendix VI(c)] which would also serve as assessment order. A copy thereof along with the notice of demand for the tax due will be issued to the assessee generally within a month of the receipt of the return.
- (iv) For quick calculation of tax, special charts and ready-reckoners should be made available to the staff. As far as possible cyclostyled standardised form should be used for all purposes so as to reduce the typing and writing work in individual cases to the minimum.

*For this purpose whenever there is a *prima facie* evidence with the Income-tax Officer, that the assessee has been concealing or deliberately understating his income, a special mark will be made in the General Index Register against such assesseees. The Income-tax Officer, will also keep a list of such assesseees with him for ready reference.

- (v) If there is a cash counter in the Office, the assessee would generally pay the tax on the cash counter, otherwise he could send it through a special form of Money Order, which we are suggesting in the Chapter "Collection and Recovery".

2.30. As stated earlier, a detailed scrutiny should be made in respect of every case covered by this scheme once in four years. The procedure described below should be followed for such a scrutiny.

Detailed scrutiny every fourth year

(i) The Income-tax Officer should select 25 per cent of the cases for scrutiny in the first year of the scheme. These cases will come up for scrutiny every fourth year thereafter. Similarly, in the next year, another 25 per cent cases should be selected for scrutiny and thereafter they will be scrutinised every fourth year. The remaining cases should be examined similarly in the third and fourth years, respectively, of the scheme and every fourth year following thereafter.

(ii) A notice [see Appendix VI(d)] combining the requirements of Sections 23(2) and 22(4) of the Income-tax Act should be issued for the year for which detailed scrutiny is to be made. By this notice, the assessee would be asked to produce the books of account which he relies upon in support of his return and such books which the Income-tax Officer might specify. The examination of accounts should, as far as possible, be on broad lines and completed on the very same day on which books are produced. The Department, in consultation with chambers of commerce and other bodies and keeping in view the local trade practices, should prescribe the types of accounts which assessee of various categories and trades should keep. If the accounts have been kept in accordance with the instructions issued by the Department, the book results should normally be accepted, if they are otherwise reasonable.

(iii) In cases where there are wide fluctuations of income in the period intervening between the last scrutiny and the one in hand, the assessee should be asked to explain the reasons therefor. If the reasons are not convincing, further inquiries should be made before the assessment is completed.

(iv) As a rule, petty additions on account of minor disallowables should be avoided. Nor should the results shown in the books of account be rejected only because of small variations in the gross profit rates. In other words, rejection of the results shown in the account books should be resorted to only in the following cases;

- (a) When the known standards of living of the assessee and the increase in his assets as reflected in the Wealth Statements are disproportionately higher than could be accounted for by the income returned by him during the intervening period;
- (b) when there are serious discrepancies in the accounts and the assessee could give no proper explanation;
- (c) when there is definite information with the Income-tax Officer that the assessee has been evading the tax.

Even in such cases, the assessee should be given an opportunity to show cause as to why the book results should not be rejected and the income computed on an estimated basis. As a further check against the indiscriminate rejection of book results, it should be prescribed that a list of

such cases should be sent to the Inspecting Assistant Commissioner for his information and scrutiny. The latter should issue appropriate instructions to the Income-tax Officers, whenever necessary.

(v) If in any case it is desired to reopen the assessments of earlier years, the Income-tax Officer should take the prior approval of the Inspecting Assistant Commissioner. Such reopenings should not be permitted unless the escapement has been found to be substantial, viz., 25 per cent of the returned income or Rs. 1,500, whichever is the less. Cases should not be reopened merely because assessment on estimated basis has been made in the year of detailed scrutiny. The results of earlier years must be compared with those shown in other cases whose results have been accepted and only if they are materially low, should a proposal for reopening be made by the assessing officer, after giving opportunity to the assessee to explain the reasons for low results and after considering his explanation.

2.31. The idea underlying this scheme is to ensure that *bona fide* small income group assesseees are not harassed in any way even if there be minor lapses, but that no quarter is shown to assesseees who, though having larger incomes, have attempted to come within the scheme by deliberately understating their incomes or by adopting fraudulent methods. The general principles guiding the imposition of penalties in these cases should, therefore, be as follows:—

Penalties

(a) Minor lapses should be overlooked and the assesseees told to be more careful in future. Penalties should be levied only in cases of deliberate under-statement or concealment of substantial income in relation to the returned income. They should be graduated in scale, depending upon the quantum of under-statement or concealment and the cooperation offered by the assesseees e.g., where the concealment is a substantial one and exceeds 50 percent of the returned income, a larger amount of penalty should be levied than in cases where the concealed income is much less. But in no cases should the penalties exceed the normal scale of penalties leviable in other cases.

(b) In cases where larger income assesseees have attempted to come within this scheme by grossly understating their income, heavier penalties should be levied and if the facts of the case warrant, the earlier years' assessments should be also reopened. In suitable cases prosecution proceedings should be also initiated, so that the higher income group assesseees are not encouraged to pass off fraudulently as small income earners.

2.32. If this scheme is implemented in the spirit in which we are suggesting it, there will be considerable reduction in the volume of assessment work and the time and energy of the officers, thus saved, could be utilised for clearing the arrears, making more effective assessments in the higher income cases and finding out new cases by more extensive and intensive surveys. The scheme envisages a departure from the normal assessment procedure to which the departmental officers have got used, and it may, therefore, be suggested that there might be loss to revenue as a result of the relaxation proposed. We do not agree that there would be any appreciable loss of revenue. On the contrary, we are firmly of the view that the very insignificant loss, if any, and it cannot be large when the total demand raised in 1957-58 in these cases was only Rs. 2.40

crores—will be compensated several times by the gain in revenues accruing from better tackling of the higher income group cases and finding out more assesseees. We trust that this new approach will have a psychological effect and improve the relations between the Department and nearly five lakhs of assesseees. In itself a good enough reward, this improvement, in due course, is bound to yield richer dividends, because the existing atmosphere of mutual suspicion and fault-finding between the assesseees and the Department will give way gradually to one of mutual trust and confidence. Many incidental benefits will also flow to the assesseees as a result of this scheme. In future, they will not have to spend much time in the Income-tax Offices and payment of income-tax will become quite a simple affair. They will save fees on representation in the income-tax proceedings which, in smaller cases, amount, sometimes, to as much as the tax itself. Harassment of innocent assesseees by unscrupulous practitioners would also be considerably checked.

2.33. The number of assessments made during 1957-58, in the cases of pure salary earners having total income of Rs. 7,500 and below, was 1·22 lakhs and the demand raised amounted to Rs. 1·56 crores. We have excluded this group from the above-mentioned scheme only because in their cases, the maintenance of accounts etc., is not called for. Normally, in all such cases assessments will be completed under section 23(1) of the Income-tax Act, even in the years selected for detailed scrutiny, unless there is definite information with the assessing officer, or it appears from the wealth Statements, that there has been concealment, suppression or escapement of income and a detailed examination is necessary in the fourth year.

2.34. Another suggestion made to us for dealing with small income cases was that the officers should go to the business premises of such assesseees, discuss matters relating to their tax liability and complete the assessments on-the-spot. We do not agree with the idea of having on-the-spot assessments as we consider that it is administratively impracticable and inadvisable and will give occasion for a series of complaints of all types. A modification of this suggestion proposed was that the assessing officers should hold their offices in localities where small assesseees were largely concentrated. *This proposal would be of advantage to the assesseees as well as to the Department and we, therefore, suggest that in cities like Bombay, Calcutta, Madras, and Delhi, instead of concentrating all the tax offices in the same building, officers dealing with small income cases should have their offices in the various localities, if the number of cases justifies such local offices.* In mofussil areas, assesseees should be called to the nearest camp which the assessing officer visits during the year. This will ensure proper assessment as well as save the assessee the trouble of attending the assessing officer's headquarters. If, however, any assessee requests for a hearing at the headquarters of the assessing officer on the ground that his representative is there, such requests should invariably be acceded to.

MIDDLE AND LARGE INCOME GROUP ASSESSEES

2.35. Assesseees in the middle income group constitute a sizeable proportion, viz., 25 to 30 per cent of the total number of assesseees and the demand raised in these cases during the year 1957-58 came to nearly eleven per cent of the total demand of Rs. 222 crores. On the other hand, the large income assesseees, although forming only seven per cent of the total number of assesseees, accounted for about 87 per cent of the total

demand raised during 1957-58. The importance of making proper and timely assessments, in these categories of cases, can hardly be over-emphasised. We were, therefore, concerned to hear that assessments in the larger income cases were usually delayed, thereby not only causing inconvenience to the assessee but also jeopardising the collection of the taxes that might be ultimately levied. We feel that these assessments should be expedited but this should not be done at the cost of their quality. The need for thorough examination and for proper investigations in such cases is clear from the fact that they contribute almost seven-eighth of the total income-tax revenues. In our opinion, if these cases are segregated from the rest, wherever possible, and entrusted to experienced and competent officers, it would help considerably not only in their proper assessments, but in expeditious disposals of such cases. Another step that we have suggested already in this direction is that all direct taxes assessments involved in a case should be completed simultaneously. In the following paragraphs, we discuss certain further measures which will help in making better assessments in these groups of cases as well as in mitigating inconvenience to assessee.

2.36. With a view to expediting assessments in the cases of middle income assessee, we consider that a distinction must be made between those which have a good tax record and those which have not. *We suggest that the cases of assessee, whose returns or accounts have been accepted in the past, should not be subjected to detailed enquiry every year, unless the assessing officer comes in possession of definite information regarding concealment of income etc., in such cases.*

2.37. One of the main causes of widespread feeling of resentment of assessee against the Department is the frequent rejection of the results shown by the account books and the assessing officers' estimating the income either under Section 23 or by invoking—the proviso to Section 13 of the Income-tax Act. This point has been emphasised not only by the Chambers of commerce and trade associations but also by several senior officers in the Department who appeared before us.

2.38. Estimated assessments are made in those cases where either no accounts are maintained or, if maintained, the accounts are scanty and unreliable due to material omissions, suppressions etc. This is particularly so in most of the cases of professional people who do not keep any accounts worth the name. Even if accounts are maintained, but the method of accounting is such that the profits or gains cannot be properly deduced therefrom, assessments on estimated basis have to be made in terms of the proviso to Section 13. The assessing officers, in such circumstances have perforce to estimate the real incomes. Resort to estimates becomes particularly necessary in cases of retail trades and businesses where it is easy to take out a portion of the receipts from the till daily without its being recorded in the books. In many of those cases, the profits disclosed are so low that the smallness of the profits itself casts doubt on the reliability of the accounts. The problem of estimated assessments is by no means peculiar to India. The tax laws of countries like the U.K., U.S.A., and Canada contain specific provisions* authorising the assessing officers to estimate incomes in such cases.

*Section 41 of the Internal Revenue Code of U.S.A.
Section 34(4) of the Income-tax Act, 1922 of the United Kingdom.
Section 46(6) of the Canadian Income-tax Act.

2.39. It was urged that in many cases it was not possible to maintain detailed accounts of petty businesses partly due to difficulties inherent in the nature of the business itself and partly due to illiteracy, ignorance of even the rudimentary principles of accounts etc. For instance, in the case of a small or medium retail trader, where the number of commodities dealt with was large, it was not possible to maintain quantitative accounts, without keeping a full-fledged accounts staff, the cost of which would be out of all proportion to the profits earned. In some cases, particularly those of general merchants, grocers, etc., it was well-nigh impossible to maintain quantitative accounts. It was pointed out that the rejection of book results in such cases by assessing officers, merely for the reason that quantitative accounts had not been kept by the retailer, was not fair. Another common reason given by the officers for not accepting the results was that the gross profit rate disclosed was too low for a particular type of business and assessee often complained that they had not been given an opportunity to explain why the gross profit in a particular case was low or had fallen as compared with that of an earlier year. It was further mentioned that just because an assessee had disclosed a high rate of profit in one year, the assessing officer expected that assessee to show the same or higher rate of profits in the subsequent years, as well. This attitude, it was urged, had no basis in reality since the fluctuation of profits from year to year was the common characteristic of any trade and there could not be any such thing as a fixed level of profits of a trade, constant for all time. It was also asserted that in framing estimates the assessing officers based their estimates on pure guess work and not on any actual data or enquiry. Again, when the accounts were defective only in part, the assessing officers rejected the entire accounts and made estimates. It was also complained that officers applied the highest rate of gross profits in a business, shown by an assessee in a locality and not the average rate of gross profits disclosed in that business by all assessees in that locality.

2.40. On the other hand, it was pointed out by officers of the Department that even where it was possible to maintain quantitative accounts and data regarding stock, the assessee did not maintain them in the hope that their total income computed by the assessing officers on estimated basis, by itself, or with the relief in appeals would be much less than their actual income. It was also stated that appellate authorities themselves did not permit the assessing officers to vary the rates of profit that might have been fixed by them in appeals against the earlier years' assessments, and at the same time, the same authorities criticised the officers adopting the rates of profits approved by themselves on the ground that trade conditions and profits could not remain constant year after year. Another point emphasised was that in the majority of the appeals against such assessments, the appellate authorities would generally uphold the action of the assessing officers in resorting to estimates but in most of such cases they also reduced the rates of gross profits thereby giving substantial reliefs. As a result of this vicious circle, honest assessee sometimes suffered while a number of dishonest assessee get away with under-assessments by persisting in not keeping proper accounts.

2.41. We have carefully considered this problem in all its aspects. Some witnesses went so far as to suggest that the proviso itself should be removed from the statute. *We do not approve of this remedy which is certainly a worse thing than the disease itself.* While therefore, we do not recommend the deletion of the proviso, we are emphatically of the view that it should be used with great caution. As laid down in a long line of judicial pronouncements on this subject, the assessing officer while making estimate, should not be arbitrary, vindictive or capricious. The

Supreme Court also held in the case of Dhakeswari Cotton Mills* that the estimate should not be based on surmises, suspicions or conjectures, and that the officer must disclose to the assessee the material on which he was going to base his estimates and give the assessee a full opportunity of making his representation thereon. With a view to removing the various difficulties that have been pointed out, we make the following suggestions:—

- (a) *the Department should, after due study of the local conditions and practices, and in consultation with the various chambers and trade associations, consider the feasibility of prescribing the minimum accounts and the type of accounts which should be maintained in respect of each trade, business or vocation in the various parts of the country. In particular, it should be ensured that a simple cash record of all receipts and payments relating to the trade or business is kept. A record of opening and closing stocks as also outstanding debtors and creditors should be kept wherever possible. The Department should issue and widely publicise detailed instructions in local languages regarding the manner in which the accounts should be maintained. It should also make the prescribed forms of accounts available to the public at nominal prices. For the first few years the maintenance of certain basic accounts may be optional but after sometime it must be made compulsory. If the accounts, as prescribed, are maintained, they should be accepted by the assessing officers even though there are minor omissions or other defects. Even if the accounts are not maintained in the prescribed forms, but are kept in proper manner with sales and purchases supported by vouchers or otherwise proved, they should be accepted unless there are grave omissions or there is evidence of suppressed sales or undisclosed purchases. The assessing officer should, particularly refrain from rejecting the accounts in a routine way or summarily on the sole ground that the gross profits disclosed are low as compared with what the assessee himself had shown in the earlier years, or as compared with those of the other assessees. Low rate of profit is, no doubt, a pertinent point for further enquiry. The assessing officer should, in such cases, ask the assessee to explain it and he should duly consider the explanation before completing the assessment.*
- (b) *In any case where it is proposed to reject the results shown by the account books, the assessee must be given an opportunity to show why it should not be done and/or to explain the reasons for the acts of omission and commission. Before finalising the assessment the assessee should also be given an indication of the rate of gross profits that is proposed to be adopted and the relevant particulars of comparable cases ensuring that such information does not enable the assessee to identify the person to whom the particulars relate. In cases where no books of accounts are maintained, the assessee should be given an opportunity of expressing their views on the proposed estimates. But if an assessee persists in the non-maintenance of accounts in spite*

*[(1954)26 I.T.R. 775]

of all the facilities given by the Department, detailed investigation may be made with reference to his wealth statement and standard of living.

- (c) *In cases where accounts are reliable in part, estimates should be restricted only to the part which is not acceptable.*
- (d) *Gross Profit Registers in the prescribed proforma should be maintained tradewise in each tax Circle or Ward, giving name and address of assessee, General Index Register number, the nature of business, the turnover disclosed, gross profit rate shown and accepted, special features, if any, etc.*
- (e) *In order that these instructions are properly carried out by the assessing officers and that there is no indiscriminate application of the proviso to Section 13, each assessing officer should be required to send to his Inspecting Assistant Commissioner, every fortnight, a list of the cases in which the proviso had been applied, giving brief reasons against each case for such application. The Inspecting Assistant Commissioner should inspect a certain percentage of such cases within a month or two and issue appropriate instructions in the matter for the guidance of the assessing officer.*
- (f) *In their orders on appeal against the invoking of the proviso and the application of gross profit rates, the appellate authorities should properly and fully reason out the relief which they give, so that the orders do not show arbitrariness in reducing the rates despite the fact that the invoking of the proviso has been upheld.*

2.42. In order to enable assessing officers to make proper and speedy assessments of middle and large income group assessee, one of the suggestions considered by us was to require them to file, periodically, statements of total wealth. Assessee liable to Wealth-tax are already required, under the Wealth-tax Act, to furnish statement of net wealth every year. We have, earlier, suggested that assessee in small income group should file statements of total wealth once in four years. If remaining categories of assessee are also required to file statements once in four years, they will merely be falling in line with the others. These statements would help considerably in reducing the number of estimated assessments. As we have pointed out in the Chapter on 'Evasion and Avoidance', wealth statements are one of the most effective methods of checking tax evasion. Some opposition to this proposal was voiced on the ground that there was already a provision in the statute which authorised the assessing officer to obtain, after getting the prior permission of the Commissioner, such a statement from any assessee for any year and this new provision would cause an unnecessary additional obligation on the assessee. We do not agree with this view. We feel that honest assessee would neither have any difficulty nor any serious objection to the furnishing of this statement. In fact, it would help them considerably to reconcile their own financial affairs. We recommend, therefore, that a provision should be made in the statute requiring all assessee (other than wealth-tax assessee) to furnish statements of total wealth every fourth year along with their returns of income. Since, even at present, the departmental instructions require that total wealth statements should be called for once in three years from all persons with incomes exceeding Rs. 36,000, our suggestion would only be an extension of the present practice.

2.43. It was represented to us that one of the reasons leading to bad assessments was that views of the assessee expressed in the course of the proceedings were not fully considered by the assessing officers while completing the assessments and, in particular, they were not given a full opportunity to rebut the adverse presumptions that the officer might have made. It was stated that such assessments led to multiplicity of appeals, difficulties in collection of taxes levied and inconvenience to assessee. We find that these complaints are not without justification. We, therefore, suggest that before finalising the assessment, the assessing officer should make a tentative computation of the total income, wealth, etc., as the case may be. Where the additions or disallowances proposed to be made by him are nominal or of small amounts only, he may discuss the issue with the assessee or his representative orally and record the same in the Order Sheet. But whenever substantial additions are proposed, he must allow an opportunity, in writing, to the assessee to give his point of view. In such cases, a fortnight's time after the final hearing should be allowed to the assessee for sending a reply and this time should not be extended. If the assessee or his representative waives the right to an opportunity in writing this fact and his oral replies should be recorded in the Order Sheet. After considering the submissions of the assessee, the officer should make a proper and judicious assessment. In recommending this procedure, we are not suggesting that the right of the assessing officer to vary the amount of additions or make fresh additions in the light of further evidence should in any way be affected. However, if after getting the assessee's reply, the officer proposes to make a material addition to the computation as compared to what he intimated to the assessee, he should give a further opportunity to the assessee. He should, of course, be free to advance fresh arguments in support of his conclusions in the assessment order without having to intimate them in advance to the assessee.

2.44. We examined the question whether, in order to help the ready acceptance of returns in the higher income groups, there should not be a compulsory audit of accounts in cases of incomes or assets above a certain limit, and whether the auditors in such cases should not be required to give a certificate in a prescribed form. The direct taxes Acts, at present, do not require any class of assessee to get their accounts audited. For limited companies, however, audit of accounts is compulsory under the Companies Act of 1956 and the auditors are required to give a fairly comprehensive report, as indicated in Section 227 of that Act. The Income-tax return form for the companies also requires that a copy of the audit report and certificate should be furnished with the return. If the audit certificate is qualified in any way, the assessing officer invariably looks into the points in detail. The witnesses who gave evidence on this question expressed widely different views and even among the Chartered Accountants there was an extreme divergence of opinion. In its original reply to our Questionnaire, the Institute of Chartered Accountants of India had welcomed the proposal. In the supplementary reply sent by it later, the Institute stated that there was a difference of opinion among the Chartered Accountants on this question. Whereas a majority amongst them was in favour of the proposal of compulsory audit, a section of opinion in the profession felt that the suggestion was not practicable.

2.45. The main advantage of compulsory audit is that it would act as a deterrent to evasion. Apart from the possibility of the auditor himself being able to detect the concealment, if any, there would always be, in the minds of the assessee, the fear of such detection, the importance of which should not be under-estimated. There is also no doubt, that the

audit of business accounts greatly facilitates the assessing officer's work, as he will not have to check in detail the arithmetical calculations, postings, adjustments, etc., in those cases. This is quite an important factor, because arithmetical manipulations in the accounts may pass undetected, where there are a large number of books of accounts to be checked by the assessing officer who has necessarily to limit his scrutiny to a test-check of a few items. Another advantage of compulsory audit is that the auditor would himself check whether the various items of receipts and expenditure are duly and properly vouched. In the case of audited accounts, therefore, the assessing officer need concentrate his attention only on the more important points which have a bearing on the determination of income-tax or wealth-tax liability of the assessee. This would facilitate expeditious disposal of cases and would also improve the quality of assessments. Further, in the majority of the cases, the very fact that the accounts have been audited would enable the accounts to be accepted, thus minimising the task of the Department as well as of the assessee. This will also make for better relations between the Department and the assessee. In short, the introduction of the scheme of compulsory audit would achieve the two main objectives of our terms of reference, viz., the checking of evasion and removal of inconvenience to assessee.

2.46. The proposal for compulsory audit has been opposed by some witnesses mainly on the ground that the auditor has his limitations and has to confine his checking to what is in the books and to whatever evidence is produced before him by the clients. This, it is said, is supported by the fact that large concealments had been detected by the Income-tax Investigation Commission even in cases where the audited accounts were supported by clear and unqualified certificates. Another argument urged against compulsory audit is that all businessmen cannot afford the cost of audit. It is also said that as the number of chartered accountants in practice, is only 3200 and as they are not evenly spread out throughout the country, there would not be enough chartered accountants to undertake the job of audit of non-company business accounts also.

2.47. With regard to the difficulties pointed out in the preceding paragraph there seems to be a difference of opinion even among the chartered accountants. One group of chartered accountants thinks that, far from there being a shortage of chartered accountants to undertake this work, many of the younger members of the profession are not fully employed at present, and that they would actually welcome more work resulting from compulsory audit. Besides, if the compulsory audit is limited to cases of incomes above Rs. 50,000, there would be only about 14,000 such cases where accounts will have to be audited annually. The argument that compulsory audit will involve heavy cost to the assessee, is also not very sound. The cost of audit is fully allowed in the computation of total income and, therefore, Government indirectly meets more than 50 per cent of this cost by way of exemption of this amount from tax. As regards the contention that audit by a chartered accountant, in the very nature of things, will be a limited one, as he cannot go behind the transactions, it has been pointed out that so long as this limitation is fully kept in view by all concerned, viz., the assessing officer, the assessee and the auditor, no difficulties are likely to occur. Even such a limited audit will be of advantage and the assessing officer will himself take care of what is not in the accounts and what lies behind the transactions.

2.48. We may mention that this question was considered both by the Income-tax Investigation Commission and the Taxation Enquiry Commission in the case of super-tax assesseees deriving income from various sources including business. As a result of the recommendations of the former, a clause for compulsory audit was included in the Income-tax (Amendment) Bill, 1951, which, however, lapsed because of the dissolution of the Parliament. The Taxation Enquiry Commission was, however, against the proposal and it was of the view that a better utilisation of the services of auditors would be had by making them legally responsible for furnishing full and correct information in reply to questions raised by the assessing officers after scrutiny of the returns and audit statements and, if necessary, after the general examination of the accounts.

2.49. The Central Board of Revenue, in consultation with the Institute of Chartered Accountants of India and the Ministry of Law, prescribed an audit certificate in the following form for non-company cases which, if furnished along with the return of income, would enable the assessing officers to accept the accounts readily.

"We have audited the foregoing balance sheet as at _____ and the Profit and Loss Accounts for the year ended on that date of _____ with the books and vouchers, as maintained by the said _____ and report that:

- (i) we have obtained all information and explanations as required;
- (ii) the said Profit & Loss Account and Balance Sheet are drawn up in accordance with the said books; and
- (iii) in our opinion, the Balance Sheet contains a correct summary disclosing the general nature of property and assets and capital and liabilities and the basis of valuation of fixed assets and stocks and it exhibits a true and correct view of the state of affairs, according to the best information and explanation given to us and as shown by the books of the said....."

Date.....

Signature....."

Place.....

Chartered Accountant(s)

Assessing officers were asked by the Central Board of Revenue to encourage audit of accounts by accepting them if certificates of this nature were produced. We were told that the response to this proposal of voluntary audit of accounts in the manner acceptable to the Department had been rather poor. In a recent sample survey conducted by the Central Board of Revenue, it was observed that only in one per cent of non-company cases represented by chartered accountants, audit certificates in the prescribed form were furnished. Obviously, the idea of voluntary audit of accounts has not gained popularity.

2.50. We have given the proposal of company audit of accounts our careful consideration. The advantages of compulsory audit far outweigh its disadvantages and limitations. *We recommend that in the interests of expeditious and proper assessments of the assesseees in higher income group, audit of accounts in all cases of business, profession and vocation, where total assessed income in any of the last three years exceeds Rs. 50,000, should be made compulsory by law. Audit should also be*

compulsory in those cases of business, profession and vocation where the returned income for the first time exceeds Rs. 50,000. We have advisedly put the limit for compulsory audit beyonds incomes exceeding Rs. 50,000. The All-India Income-tax Revenue Statistics for 1957-58 show that during that year, the number of completed assessments excluding those of companies and salaried employees in different income ranges, was as under—

Income Range.		No of assessments.
Above Rs.	25,000	
" Rs.	40,000	38,064
" Rs.	50,000	22,087
" Rs.	75,000	13,832
" Rs.	1,00,000	6,715
		3,705

Thus the number of cases in which audit will have to be compulsorily carried out would be about 14,000. This task would not be beyond the capacity of the existing number of practising chartered accountants. We also recommend that the income limit of Rs. 50,000 should be revised by Government as and when sufficient experience of this procedure has been gained and more and more chartered accountants become available. As regards the certificate to be given by the chartered accountants in these cases of compulsory audit, we suggest that it should be in the form prescribed by the Central Board of Revenue to which we have made a reference in the preceding paragraph. After some experience, the certificate could be modified, if necessary, by the Central Board of Revenue in consultation with the Institute of Chartered Accountants of India.

2.51. While on the subject of audit of accounts, we might refer to the suggestion that the Government should have the right in certain cases to appoint chartered accountants to audit the accounts of the assesseees. We do not consider such a provision necessary, particularly in view of our recommendation for compulsory audit in all business cases with income above Rs. 50,000.

Government's right to appoint chartered accountants for further audit.

IMPROVEMENTS IN METHODS OF WORK

2.52. We now proceed to consider various problems relating to the methods and procedures of work, and to suggest certain modifications in them with a view to expediting the process of assessment and mitigating inconveniences to assesseees.

2.53. The practice at present followed regarding the issue of notices for hearing and production of account books in connection with the assessment proceedings, sometimes, causes avoidable inconvenience to assesseees. It appears that the notices under Sections 22(4) and 23(2) of the Income-tax Act are issued simultaneously, as a matter of routine, in all cases where a return of income has been filed. The former notice may not be necessary in some cases, particularly the simpler ones. We, therefore, suggest that in cases where

Notices of hearing

the assessments could be completed in one hearing and production of books of accounts is necessary, it would be proper to issue the two notices simultaneously. For this purpose a combined form of notice should be issued. In cases where the assessing officer does not require the production of specific books, assessments should be disposed of by a notice under Section 23(2) only. In cases where a return is not submitted, resort may have to be made to Section 22(4) to enable the assessing officer to have the account books produced before him.

2.54. It was pointed out to us that there were, at times, delays in assessments because the assessing officer had himself to do the entire work relating to assessments, including the spade work connected with examination of accounts and investigation flowing therefrom. Till 1945 or so, the assessing officers were given help, for this purpose, by a special class of officials known as Examiners of Accounts. At Bombay and Calcutta, separate Examiners' Branches under the charge of a Chief Examiner were functioning. Under this system assessing officers used to refer cases for examination of account books to the Chief Examiner who would entrust the work to any of the Examiners, and after checking the examination note submitted by the Examiner, the Chief Examiner would send it to the assessing officer. The cadre of Examiner of Accounts was abolished because it was found that the assessing officers were generally not exercising any further check. Though even now assessing officers sometimes utilise the services of Inspectors attached to them for examination of accounts in small cases and on specific issues, the help they get in the matter is, on the whole, inadequate.

2.55. The main defect of the system was that not only did it lead to duplication of work and consequent inconvenience to assessees but also that the majority of the assessing officers lost all initiative and framed assessments on the basis of Examiner's report. Under the statute, the responsibility for framing assessments lies solely on assessing officers who must themselves examine the books of accounts. *Therefore, it would not be desirable to revive the institution of Examiner of Accounts in the form in which it existed till 1945.* But some help to the assessing officer in the matter of routine examination of accounts or detailed examination on specific issues indicated by him would, in our opinion, go a long way in expediting disposals and releasing his energies for utilisation in more important work involved in the assessment of cases. Accordingly, *we recommend that the assessing officer should be permitted to take assistance of the Inspector attached to him.* In order to provide expert assistance to the assessing officers in examining accounts in specially complicated cases, *we further recommend that at important centres of various Commissioners' charges there should be a set of experienced Examiners' preferably chartered accountants.*

2.56. Some witnesses represented to us that assessing officers, at times, scrutinised meticulously the expenses claimed and tried to disallow them on technical considerations. While the law on the subject does not require any modification, *we recommend that suitable administrative instructions should be issued to the effect that in bonafide cases, expenses should be allowed after scrutiny on broad lines without going into meticulous details and that interest, rebates and other trade discounts should be allowed in the years in which such adjustments are recorded in the books.* Whenever there are reasons to doubt the bona fides of such items, the assessing officers should make full enquiries.

257. We understand that, at times, assessment orders are not passed by some officers for a considerable period following the final hearing and, in a few instances, the officer has to give a fresh hearing for reviving his appraisal of facts and arguments. It was also brought to our notice that in some cases, the assessment orders did not accompany the notices of demand and till he applied for and got the copy of assessment order, the assessee was in the dark as regards the basis of computation of total income made by the assessing officer. In our opinion these tendencies should be strongly discouraged. We recommend that, by executive action, it should be ensured that assessment order is passed by the assessing officer as early as possible after the final hearing but in no case later than thirty days. With regard to the second complaint, we recommend that there should be a statutory provision in all the direct taxes Acts requiring the assessing officer to send a certified copy of the assessment order along with the notice of demand. It has been urged that this recommendation would throw extra work on the Department as assessment orders would have to be issued in all cases including small salary cases where assessments are completed under Section 23(1) of the Income-tax Act on the basis of returned figures. We do not think the extra work involved will be appreciable and it could be minimised by using, in such cases, printed or cyclostyled standardised assessment order forms.

258. The time taken in the calculation of the amount of taxes also impedes the quick disposal of assessments. Numerous rebates in the cases of companies, grossing up of dividends, different tax rates and surcharges for different years and different categories of assessee are some of the factors which make the calculations of taxes complicated and cumbersome. We feel that the rationalisation of company taxation, and particularly of taxation of dividends brought about by the Finance Act of 1959, will considerably help in making the calculations of taxes easier. The other difficulties, nevertheless, persist and we make the following recommendations with a view to simplifying the calculations:—

- (a) Variations in the rates of tax are necessitated by Government's general fiscal policy. Till 1922, the rates of income-tax were embodied in a schedule to the Income-tax Act itself. Since then they are being annually fixed by the Finance Acts. The change was presumably meant to secure elasticity in the fiscal system. But recent trends in the field of direct taxation appear to favour a switch over to the old system of prescribing the basic rates of tax in the relevant statutes themselves. Thus, all the direct taxes Acts legislated during the last few years *viz.*, Estate Duty, Wealth-tax, Expenditure-tax and Gift Tax Acts have Schedules fixing the rates of the respective tax. Even for income-tax the basic rates in recent years have tended to remain more or less constant. We feel that from the point of view of administrative convenience and facility of calculation of tax, it is preferable to incorporate the basic rates of income-tax in the Act itself. Any variations in these basic rates necessitated by the exigencies of the situation should be made by an amendment to this Act, and not through the annual Finance Acts.
- (b) Such part of the additional budgetary requirements as has to be met from the income-tax revenues could be met by variations in the rates of surcharges through the annual Finance Acts.

- (c) *Without affecting any of the reliefs at present admissible, such of the surcharges on income-tax as go to the divisible pool may be merged with the basic income-tax rates themselves.*
- (d) *We feel that in the case of company taxation, instead of prescribing the rate of supertax at 50 per cent and providing for several rebates from that for the various types of companies, the effective rate of super-tax for each of these types should be specified in the Act itself, after taking into consideration the present rebates admissible. The principle has been accepted in the Finance Act, 1959 in fixing the rates of advance tax for companies for the year 1959-60.*
- (e) *Calculations of tax in the case of partners of a registered firm having total income exceeding Rs. 40,000 and, therefore, subject to tax directly, are so very involved and complicated at present that even experienced officials of the Department find them difficult. We recommend that a suitable formula may be evolved which would simplify calculations in this matter without affecting the incidence or quantum of taxation.*
- (f) *We further recommend that ready reckoners for calculations of taxes should be made available to the departmental officials immediately after the passing of Finance Bill.*
- (g) *We would also recommend that all tax offices should be equipped with one or more calculating machines and members of the staff should also be trained in the use of these machines.*

2.59. While we would like the calculations of tax to be as easy and devoid of complications as possible, we would equally stress the importance of ensuring their utmost accuracy. Wrong calculations not only cause loss of revenue but may also result in over-charging of tax from the assessee. It is imperative that the chances for either are reduced to the minimum. For the past few years, the Central Board of Revenue has been taking certain administrative steps in this direction. Since 1954, roving internal Audit Parties have been functioning in the various Commissioners' Charges. An Internal Audit Party is generally headed by a Supervisor and consists of some clerks. Its function is to carry out the post-audit of completed assessments in various assessment circles of that Commissioner's charge. The audit is restricted to assessments in which the assessed income exceeds Rs. 10,000 or the refund involved is over Rs. 1,000 and consists of checking arithmetical accuracy of computations of income, calculations of depreciation and other allowances, calculations of tax, adjustments of the taxes paid in advance or deducted at source, etc. We are told that these parties have been doing good work. Beside detecting arithmetical mistakes, they have also brought to light important mistakes of principles, such as the wrong or excessive allowance of earned income relief, depreciation allowances, double income-tax relief, excess dividend tax etc., errors in the set-off of losses, failure to levy interest or substitute correct share income of a partner under Section 35 of the Income-tax Act. The figures furnished by the Central Board of Revenue on the working of these parties show that they have detected mistakes involving considerable revenue which would have been irretrievably lost, but for their timely audit. They have also detected a number of mistakes both arithmetical and those involving questions of

principle, because of which excess tax had been collected from the assesses in the past. As a result of the audit parties' bringing them to the light, the assessments have been rectified and the excess taxes refunded to the assessee concerned.

2.60. We understand that, owing to inadequate staffing of these parties, the audit work, apart from being of a very limited character, has been lagging behind the completion of assessments by two or three years. *We are of the view that these parties should be adequately staffed and established on a permanent footing in all Commissioners' Charges.* Each audit party should consist of a Supervisor and four to five Upper Division Clerks, and there should be as many audit parties as justified by the quantum of audit work involved in each Charge. A regular planned programme for audit in various Circles should be chalked out in the beginning of the year, the aim being to bring the audit up-to-date. The Inspecting Assistant Commissioners should see that the audit programmes are strictly adhered to. These parties should be as zealous in pointing out mistakes which have resulted in excess recoveries of tax from assessee as they are in detecting cases of under-payment.

2.61. It was pointed out to us that in addition to the checking done by the audit parties, instructions were issued in 1955 for pre-audit of tax calculations. According to these instructions, calculations made by a clerk are checked by another clerk or supervisor and counter-checked by the assessing officer himself, depending upon the quantum of income or refund involved. *We suggest that there should be more comprehensive and systematic check of tax calculation than is being done at present.*

2.62. Our attention was invited to the fact that the record of proceedings of cases was not properly or adequately kept and that the progress of work was sometimes retarded thereby. An order sheet is, at present, prescribed to be maintained and entries of the sequence of events have, from time to time, to be made therein by the staff and the officers, as the case may be. If this order sheet is not properly kept and some of the receipts, requisitions and hearings are not entered, it is very likely that the same information may be called for twice or some of the important notices and documents may get lost without any check thereon. It has also been observed that some assessing officers keep in the same order sheet a record of the correspondence amongst the Departmental officers in regard to that case or any reference thereto which has to be held back from inspection by assessee. *We, accordingly, recommend that the assessing officers should be required to maintain two separate order sheets. In one, they should make proper entries with regard to the issue of all the statutory notices including notice under Section 37 of the Income-tax Act, compliances thereof by the assessee or others, brief records of hearings given, receipt of various papers and documents etc. This order sheet should be available for inspection by the assessee. Copies of relevant entries in this order sheet should be made available to the assessee on application and on payment of copying fees by him. In the other order sheet, records should be kept of confidential information received by the officer, inter-departmental correspondence, etc. This latter order sheet would not be open to inspection by the assessee.*

2.63. Some chambers of commerce represented to us that the system of advance payments of tax and provisional assessments delayed the making of final assessments. From a study of the figures of pending assessments and their spread-over, we feel that there is no justification

for this view. *All the same, we would recommend that the assessing officers should see that assessment proceedings are not delayed in any case merely because there would be no further recovery of tax or the completion of assessment would result in a refund.* Our recommendations in the Chapter on 'Refunds' for grant of provisional refund and interest in certain circumstances in the latter type of cases would go a long way in checking this tendency.

2.64. We also recommend that it should be administratively prescribed that assessing officers report to their higher authorities, cases where assessments have not been completed within twelve months from the date of the filing of the returns, giving the reasons therefor. These reports, apart from having salutory effect, would be an automatic check on the pendency and the reasons for that.

2.65. It was brought to our notice that the Department, being uncertain of the ownership of any income or asset and/or of the period to which it related for the purpose of taxation, resorted frequently to making assessments in respect of the same item in the hands of two or more persons, either for the same assessment year or for more than one assessment years. We appreciate that, in some cases, it may be absolutely necessary, in the interests of revenue, to make precautionary assessments because the assessee is non-cooperative and unless such a precautionary assessment is made, there would be irretrievable loss to the revenue. *We are, however of the view that except for such exceptional cases, precautionary assessment should not be resorted to by the Department.*

2.66. Many witnesses represented to us that the present forms of income-tax returns were too complicated to be easily understood by a large majority of the tax-payers and that they required to be materially simplified. It was also mentioned that quite a few columns in these forms were inapplicable to most assessees. We have examined the matter at some length. We understand that during recent years, the Central Board of Revenue has been taking certain steps for diversification of the return forms, as a result of which the three forms, at present in use, have been evolved, *viz.*, for companies for non-company assessees deriving income mainly from business, profession or vocation and for other assessees. Simplification of return forms is, no doubt, desirable but it cannot and should not be done at the expense of any vital information required under the statute for computation of the tax liability of an assessee. The use of technical terms occurring in the statute is also unavoidable in a return form. *Notwithstanding that, the language of the existing forms can, in certain respects, be simplified and made less ambiguous. We are of the view that these forms should be so revised and rationalised that columns which are mostly superfluous are deleted, that each assessee is required to give details only in respect of those matters which are relevant to his assessment and that such enquiries of a general nature which are almost invariably made at present, in the course of assessment proceedings, are incorporated in the forms.* With these objects in view, we have the following suggestions to offer for modification of the return:—

- (a) The return form should have, in its first part, summary of the income under the various heads and also such other information which is applicable to all assessees and which is required for cross references etc., like the information under Section 38 of the Income-tax Act. Details of information regarding

income under each head should be called for in the form of annexures and each assessee should have to fill in and attach such annexures to first part of the return as are applicable to him.

- (b) Columns in the return form for getting detailed information regarding remittances and income outside the taxable territory which are inapplicable to most of the assesseees should be deleted and a note may be appended asking the assesseees to give information on these matters, wherever applicable.
- (c) Provision should be made in the return form itself for the assessee to specify the books of accounts, if any, maintained by him. We have also suggested in the Chapter on 'Evasion and Avoidance' that the Tax Adviser or Representative of the assessee who prepares or helps in the preparation of the return, should be required to give a certificate which should be made a part of the return.
- (d) Details regarding property income at present required to be given in the return form may be simplified.
- (e) The declaration verifying the correctness of particulars given in the return form and the proposed annexures should be at the end of the first part and there should be a foot-note to the effect that false or incorrect declaration would attract the application of the various relevant clauses in the taxing statute as well as under the penal code.

Some witnesses also stated that the return forms under the Wealth-tax and Expenditure-tax Acts needed simplification. These Acts have been recently introduced and therefore, the working of these return forms should be watched for some time, so that necessary modifications are made therein in the light of the experience gained.

2.67. We have taken note of the recent steps taken by the Central Board of Revenue for improving the modes and methods of work in the Income-tax Offices, with a view to increasing efficiency and output and also for introduction of the proper control measures at various stages of assessment proceedings. The methods of work in the tax offices were studied in detail by a Member of the Central Board of Revenue in 1955-56 and the recommendations made by him were considered by the Board in consultation with the Commissioners. The changes made thereafter include the introduction of the following:—

- (a) various control registers like, the reoriented General Index Register which is intended to be a permanent record of all revenue yielding cases, the Register of Investigation and the Register of Closed Cases;
- (b) the General Index Card (for assesseees with income above Rs. 15,000) which shows at a glance the various proceedings in a case at a particular point of time during a period of five years;
- (c) the Register of pending action which enables the assessing officer to have at one place the entire work-load in the files in his charge arranged in an order of priority;

- (d) the Daily Fixation Register which records the assessing officer's plan of work chalked out in advance;
- (e) Ledger Card for assessees with income above Rs. 20,000 which will show at a glance the demand raised and collections made and enable the officer to watch the progress of recoveries;
- (f) Enquiry Register to control the Inspector's work;
- (g) Calendar of daily duties and Register of Review for controlling the work of staff; and
- (h) Job description cards for the various tasks in Income-tax Offices.

We feel that these steps are appropriate and in the right direction and the Central Board of Revenue should keep a periodic watch over their effectiveness. In making changes in forms and registers, important considerations which should weigh with the administrative authorities are:

- (i) that the information is not unnecessarily duplicated;
- (ii) that the unnecessary information is not tabulated and recorded; and
- (iii) that vital information is kept in such a collated manner that it can be located at once.

2.68. Sub-section (2) of Section 60 of the Income-tax Act provides for tax relief by the Central Government in cases where a lumpsum payment, like gratuity or arrears of pay of earlier years, is received in a subsequent year and is charged to tax at a higher rate than would be applicable, if the payment was either related back to the respective years of its accrual or spread-over. According to the present procedure, assessing officers send reports on assessee's requests for such reliefs to the Central Government through their respective Commissioners, intimating the relief due on the basis of rules prescribed. The reliefs are formally sanctioned by the Government. We find that the vesting of their authority in Central Government makes for unnecessary correspondence and delays in the sanction of the reliefs. The rules are quite clear and their administration is well understood. We, therefore, suggest that the power to grant relief under Section 60(2) of the Income-tax Act in accordance with the rules already laid down should statutorily vest in the Commissioners of Income-tax and not the Central Government.

CHAPTER 3

ASSESSMENTS—II

SPECIAL PROBLEMS

INTRODUCTORY

3.1. In this Chapter, we will deal with various facets of the taxing process in relation to assessments and the difficulties that are experienced at different stages thereof. Although our terms of reference restrict us to considering only the administrative and procedural aspects of the direct taxation laws, we have, at times, gone into the rationale of certain provisions, which cannot altogether be divorced from their administration. This is inevitable in certain cases. We have, however, endeavoured to confine ourselves to the administrative and procedural aspects of these laws, as far as possible.

FOREIGN BRANCHES

3.2. It was brought to our notice that, in certain cases difficulties were experienced on account of the insistence of assessing officers on payment of the taxes in respect of foreign income or assets even though there was embargo on their repatriation and there were specific provisions in the Income-tax and Wealth-tax Acts for holding these demands in abeyance. We understand that the Central Board of Revenue has already issued necessary instructions in the matter, enjoining upon the assessing officer to follow the statutory provisions. *We, however, suggest that the Department should take special steps to ensure that the provisions of the statute and the instructions issued by the Board are followed strictly by all assessing officers and no harassment is caused to the assessees.*

3.3. Some witnesses pointed out that special hardship was caused, specially in wealth-tax assessments, to assessees who were holding shares of Indian companies which had assets in foreign countries, particularly in Pakistan and Portuguese East Africa, but which could not bring their profits or capital to India. *In such cases, we recommend, that, though the income or the assets may be included for assessment purposes, the amount of tax to be recovered from the assessee should be limited to the amount of tax that would have been payable, had the income or assets in these countries not been included in the assessee's total world income or wealth, as the case may be. The balance of the demand should be kept in abeyance till such time as the prohibition or restrictions regarding the repatriation of profits or capital are removed.*

3.4. Our attention was invited to the fact that some assessing officers insisted on the production of account books of foreign transactions in cases of assessees having business in foreign countries. It was stated that there were practical difficulties in producing these books. The Central Board of Revenue, we understand, has already directed the officers that production of such books should not be insisted upon as a rule, and normally, the statements of account of foreign transactions should be accepted. *We are*

further told that assessments in this country are, even now, generally based on assessment orders of the taxing authorities of the other countries. We feel that unless there are reasons to suspect the *bona fides* of the certificates issued by the foreign authorities, such certificates should be invariably accepted. In such cases, there should be no need for insisting on the production of account books or even audited balance sheets or statements of account.

DEPRECIATION ALLOWANCES

3.5. Depreciation allowances are intended to charge off each year, from the capital cost of assets, a suitable amount representing the usage, wear and tear or obsolescence of assets used in the production of income. In the Income-tax Act, provisions have been made for the deduction of depreciation allowances, in the computation of total income, in the form of clauses (vi), (vi-a) and (vii) of sub-section (2) of Section 10 of the Act. Under these provisions, depreciation is allowable in respect of any building, plant and machinery and furniture owned by an assessee and used in the business, profession or vocation carried on by him. The annual rates of depreciation for various types of assets are prescribed in Rule 8 of the Income-tax Rules. These rates are applied to the written-down value of the assets as at the beginning of the year, but the total depreciation admissible (including initial depreciation on new assets which was admissible during the period first April, 1945 to 31st March, 1956) is restricted to the cost of an asset. The Rule also lays down that depreciation is to be allowed proportionately, according to the completed months of user of an asset in a year. In the case of ocean-going ships, however, 'straight-line' method is employed for the calculation of depreciation allowance. In the latter method, the annual provision is given by the original cost of an asset divided by the number of years of its estimated or assumed life. Prior to 1939 the 'straight-line' method was followed for calculating depreciation in respect of all types of assets. The 'written down value' method was introduced by the Income-tax (Amendment) Act, 1939, as a result of the recommendation of Income-tax Enquiry Committee, 1936, which felt that this method was not only more logical but also simpler to operate than the 'straight-line' method which required the keeping of elaborate records to secure that the aggregate depreciation allowance did not exceed the cost of the asset.

3.6. Clause (vii) of sub-section (2) of Section 10 of the Income-tax Act provides that if a building, machinery or plant which is being used for the purpose of business, profession or vocation, is sold, discarded, demolished or destroyed, a balancing allowance equal to the difference between the written down value and sale or scrap price, as the case may be, is to be allowed for the year of sale, discard etc. If the sale value or the scrap value exceeds the written down value, the difference is taken as the income of the year but only upto the limit of total depreciation allowed. A claim for balancing allowance can be made subject to the condition that it is actually written off by the assessee in his books of account. Under the existing law, this allowance is available only for buildings and plant and machinery but not for furniture.

3.7. We now proceed to discuss the various problems and difficulties relating to depreciation allowances, that were brought to our notice.

3.8. Various alternative methods of calculating depreciation came in for discussion during the course of our enquiry. Some witnesses were of the view that, of all the methods, the 'straight-line' method was the simplest and that it should be revived. A suggestion was made for adopting the

Methods of calculation

'declining balance' method which was being followed in the United States. We had also before us the radical suggestion of Prof. N. Kaldor that instead of the present depreciation allowance, capital allowance at the rate of 2/3rd or 3/4th of the capital cost might be allowed in the very first year of the acquisition of the asset. We have carefully considered the relative merits and demerits of the various methods. *We are in favour of continuing the existing method of allowing depreciation on the written down value, for assets other than ocean-going ships.* This method conforms closest to the accepted principles of accountancy and is followed in many countries. Since the larger part of the cost is written off in the initial years, the risk to the business or industry is also considerably reduced. This method secures, automatically, that depreciation in excess of the cost of the asset is not allowed. Ocean-going ships, however, fall in a special category and as such ships are comparatively few, maintenance of detailed records for each ship would not present any difficulty.

3.9. It was represented to us that the computation of depreciation allowance on 'months of user' basis led to avoidable waste of time and energy of the assesses and the Department, without any commensurate revenue gain, even in stray cases. It involved keeping of minute details about the use of the asset. We feel that this is true to some extent. However, unless there is some check on actual user of an asset, depreciation allowance is liable to be abused. *We, therefore, suggest that depreciation at full rates should be allowed in respect of an asset which has been used for the business for six months or more during the 'previous year'. For an asset which has been used for more than a month but less than six months, depreciation should be allowed at half of the prescribed rates. No depreciation should be admissible as regards an asset which has not been used for a total period of more than a month during the 'previous year'.*

3.10. It was suggested in some of the representations that the present rate schedule and the categorisation of assets given in Rule 8 of the Income-tax Rules needed to be suitably modified so as to bring them in tune with the latest developments in industry and technology. We understand that according to the existing practice followed for effecting any variations in the rates, the Central Board of Revenue, on receipt of any representation in this regard, makes due investigation and elicits the views of the concerned industrial interests, chambers of commerce, etc. After examination of these views, if the Board is satisfied about the necessity of any change or amendment, it makes that accordingly. *This procedure is quite satisfactory and may be continued. However, in future, before making any changes or amendments in this regard, the views of the Direct Taxes Central Advisory Committee which we are proposing in the Chapter on 'Public Relations' should be obtained and duly considered by the Board.*

3.11. Some difficulty is, at present, experienced by assesses in getting relief under Section 10(2) (vii) of the Income-tax Act when the assets had been purchased in one lot and subsequently one of them only is sold. In such cases, it becomes difficult for the assesses to ascertain the separate cost of that asset and also its written down value at the time of sale, for the purpose of write off in the books of account. If the assessee fails to write off the amount, he is not entitled to the benefit of balancing depreciation allowance. In order to

Balancing depreciation
or profit under Sect on
10(2)(vii) of Income-
tax Act.

remove this difficulty in such cases, the assessee should intimate the relevant particulars to the assessing officer concerned and ascertain from him the correct amount that should be written off. Suitable instructions may be issued in this regard.

3.12. As already stated, balancing allowance in terms of Section 10(2) (vii) of the Income-tax Act is not available in respect of furniture. We do not understand why furniture alone has been excluded from the purview of this sub-section. We feel that there is no plausible reason or justification for this distinction and *recommend that this clause should be applicable to furniture also*. We note that recommendation to this effect was also made both by the Income-tax Investigation Commission and the Taxation Enquiry Commission.

3.13. We were given to understand that the application of Section 10(2) (vii) of the Income-tax Act had led to practical difficulties in respect of allowing depreciation or charging profit in the case of an asset which had been purchased and sold in the same year. *We suggest that in such cases, no depreciation should be allowable and the difference between the purchase and the sale price of the asset should be treated as capital gain or loss, as the case may be.*

3.14. It was suggested to us that the existing provision, under Section 10(2) (vii) of the Income-tax Act, for the inclusion of the profit on the sale of an asset in the total income of the year of sale, increased the rate of tax considerably, and that it would be equitable to spread such profits over a number of years. Another suggestion made in this regard was that the balancing depreciation or profits should be treated as capital loss or gain respectively. We are of the view that the present law in the matter is quite equitable and no change therein is required. We feel that such a claim cannot be justified when the basis for allowing depreciation is 'written down value', which involves charging of larger amounts of depreciation in the earlier years, thereby reducing considerably the rates at which the assessee has to pay taxes in those years.

3.15. Some witnesses represented that in the case of premises taken on lease for business purposes, depreciation should be allowed in respect of material alterations or additions made by the assessee to the assets. It was stated that, at times, owing to certain legal or other difficulties, the premises required for a business could not be purchased by an assessee who had perforce to take them on lease and before starting the business, which sometimes included manufacturing operations also, he had to make material alterations and additions to those premises. In such cases, denial of depreciation allowance, it was urged, was unjust and inequitable, particularly when the lessor also did not get the benefit. *We are impressed by this contention and suggest that, by executive instructions, repair expenses and normal depreciation allowances on alterations or additions made by the lessee to the leased premises which are used for the purposes of business, profession or vocation, should be allowed in his assessment to the extent to which he would have been entitled under the Income-tax Act, had he been the owner of the premises. This concession should be available only for the period of the lease. Any residual depreciation which cannot be given or remains unabsorbed, owing to the termination of the lease, should not be allowed or carried forward either in the hands of the lessee or the lessor.*

3.16. Certain difficulties arising out of the conflict of method of calculating depreciation laid down in the Electricity (Supply) Act, 1948 and that followed under the Income-tax Act were brought to our notice by the Federation of Electricity Undertakings of India. With the withdrawal of initial and extra depreciation allowances in the Income-tax Act, the difference is now narrowed down to two points. First, the basis prescribed for charging depreciation under the Electricity (Supply) Act, 1948, is either the 'straight-line' or the 'compound interest' method whereas under the Income-tax Act, 'written down value method' is followed. Secondly, extra depreciation which is allowable under the Income-tax Act in respect of second shift working is not taken into consideration in the calculation of depreciation under the Electricity (Supply) Act, 1948. These differences assume importance because the charges for electricity supplied to consumers have to be adjusted periodically with reference to the book profits which are arrived at after allowing the depreciation calculated on the basis laid down in the Electricity (Supply) Act. It was pointed out that the difference between the two methods affected the electricity undertakings adversely in subsequent years when the assets became old, and the depreciation allowable under the Income-tax law was lower than that calculated on the basis laid down in the Electricity (Supply) Act, and they had to pay higher taxes without being entitled to increase the charges for electricity supplied to consumers. *We are of the view that the best solution for this difficulty lies in suitable amendment of the Electricity (Supply) Act so as to provide for appropriate reserves of depreciation in earlier years.* We find that the Taxation Enquiry Commission had also made similar recommendations.

DEVELOPMENT REBATE

3.17. Development rebate was recommended by the Taxation Enquiry Commission to be granted to selected industries with a view to stimulate the expansion and development of production enterprise. It suggested that 25 per cent of the cost of all new assets in the selected industries should be charged to revenue in lieu of the initial depreciation allowance, and this allowance should not count in determining the total depreciation allowable. The Commission expressed the view that this rebate should be available for all purchases of fixed assets, whether intended for replacement or extension and to new as well as existing concerns in the industries selected. Two criteria were suggested by the Commission for selection of industries for grant of development rebate, *viz.*, (a) the importance of the industry concerned from the point of view of national development, and (b) the extent to which the industry was unlikely to be developed, if left to the voluntary efforts of private enterprise and without any special stimulus by way of tax relief. The Commission was, broadly, in favour of confining the concession to the producers' goods and capital goods industries.

3.18. This recommendation was accepted by the Government in a modified form, and a new clause *viz.*, (vi-b) was inserted in Section 10(2) of the Income-tax Act, by the Finance Act, 1955. This clause provided for a development rebate at the rate of 25 per cent of the original cost of machinery or plant for the year of installation, provided, the machinery or plant was new and had been installed after 31st March, 1954, and was used wholly for the purpose of assessee's business

and the particulars prescribed for preferring claim for depreciation allowance had been furnished. Development rebate was to be granted over and above the full recoupment of the total cost by way of depreciation allowances. The rebate was not restricted to any particular industries, but was available for all new plant and machinery installed.

3.19. It was observed within a short time of the working of this provision that the concession was being abused and the savings in tax on account of this rebate were being frittered away by expenditure or distribution in the form of higher dividends etc. As this was not in consonance with the object underlying the grant of the rebate, the allowance of the rebate was made subject to fulfilment of certain conditions which were prescribed by the Finance Act, 1953. The restrictions laid down were as follows :—

- (a) An amount equal to 75 per cent of the development rebate admissible should be debited to the Profit and Loss Account of the relevant 'previous year' and credited to a reserve account ;
- (b) During a period of ten years next following, this reserve should be utilised only for the purposes of the assessee's business. The reserve could not be utilised for distribution by way of dividends or profits or remittances outside India as profits or for the acquisition of assets outside the country; and
- (c) The asset on which this rebate was allowed should not be sold or otherwise transferred by the assessee (except to Government) before the expiry of ten years from the end of the year in which the asset was installed.

If any of these conditions are not fulfilled, either the development rebate is not allowed to the assessee, or, if initially allowed, the rebate could be withdrawn by rectification of the assessment under Section 35 of the Income-tax Act.

3.20. Lest these restrictions should be construed rather harshly by some of the assessing officers, the Central Board of Revenue issued elaborate instructions regarding their import and extent. However, quite a few practical difficulties connected with the grant of development rebate in the face of these recent restrictions were brought to our notice. We discuss them in the succeeding paragraphs.

3.21. It was represented to us by some chambers of commerce that 75 per cent of the development rebate, which was required, at present, to be funded in the year in which it was claimed, should be allowed to be spread over a period of eight years or so, particularly in respect of new companies. We do not see any justification for making any such change, because it goes against the basic principle of the restrictions.

3.22. We were told that considerable hardship would be experienced on account of the condition that, for the allowance of development rebate, the asset should not be sold or otherwise transferred to any person other than the Government for a period of ten years. This period, it was stated, was too long in respect of certain categories of machinery and plant which became obsolete quickly owing to swift technological developments. It was also pointed out that there might be circumstances like amalgamation

of companies, which necessitate sale or transfer of assets, on which development rebate had been allowed within a period shorter than ten years. It was, therefore, suggested that in such cases, the period of ten years should be relaxable. There is some force in this suggestion and we accordingly recommend that the period of ten years may be reduced to eight years. We also feel that the concession of non-withdrawal of the rebate if the asset is sold to Government, should be extended to cases of sales to Government Companies, statutory corporations and public utility companies acquired by local authorities or State Governments. Similarly, sales or transfers resulting from the absorption of one company, by amalgamation or otherwise, by another company should not lead to disentitlement or forfeiture of the whole or any part of the development rebate.

3.23. Under the present law, if a firm, which has been allowed development rebate in respect of plant and machinery newly installed by it, converts itself into a limited company, the rebate will be forfeited, even though the assets and liabilities may be passed on, in toto, by the firm to the limited company. We feel that it would be inequitable and would defeat the very purpose of this rebate, if it is withdrawn in the case of a firm which converts itself into a private limited company, the share capital of the erstwhile partners remaining the same or more. In order to prevent abuse it should be insisted that in such cases the amount kept as a reserve by the firm should be transferred *en bloc* to the private limited company and the latter should also keep it, as such, under the same conditions as would have been applicable to the firm, had it continued. If these conditions are fulfilled, we recommend that the rebate should not be forfeited in such cases.

3.24. We also suggest that there should be a general provision in the statute conferring on the Central Board of Revenue, residuary powers of relaxation of the various conditions for entitlement to development rebate in exceptional cases. Such residuary powers will enable the Central Board of Revenue to relax the condition regarding the prohibition on sale or transfer of the asset within ten years in the case of machinery and equipment which tend to become obsolete very soon, e.g., air-crafts, electronic equipment etc. It will be difficult to provide such cases in the statute itself and the best course would be to leave it to the Central Board of Revenue to regulate this, by rule or otherwise.

3.25. In cases of companies which acquire new machinery entitled to development rebate but which incur overall losses within the statutory period of ten years during which the various conditions in regard to the rebate operate, the rebate should not be withdrawn, if such a withdrawal results in the levy of tax.

3.26. Several chambers of commerce represented to us that the wording used in Section 10(2) (vi-b), viz., 'new machinery and plant installed' being differently interpreted by the assesses and the Department, had given rise to considerable litigation. The Department's view of installation of an asset appears to be that it should be fixed to the earth. Accordingly, it was not allowing any development rebate for motor vehicles, tractors, etc. We find that in some recent judgments*, the Bombay High Court has expressed the opinion that 'installed' does not necessarily mean

* C.I.T. (Central) Bombay Vs. Saraspur Mills Ltd. [(1959) 36 I.T.R. 580] C.I.T. Vs. Lever Bros. (India) Ltd [(1959) 37 I.T.R. 140.]

'fixed in position'. According to them, if an asset is 'inducted' or 'introduced' and used for business purposes, it is entitled to development rebate. We suggest that the intention of the legislature with regard to the word 'installed' should be clarified beyond all doubt by suitable amendment of the Income-tax Act. While we feel that development rebate should not be admissible for such conveyances like cars, etc., in respect of which the personal use is often indistinguishable from their business use, we are of the view that the rebate should not be restricted only to plant and machinery which is fixed to the earth. Development rebate should also be allowable in the case of mobile plant and machinery such as earth removers, cranes, bulldozers, aero-engines, coal mining machinery etc. We also recommend that trucks and tractors and other machinery which are used exclusively in connection with mining operations should be entitled to development rebate. No such rebate should, however, be allowed on trucks and tractors used in businesses other than mining.

3.27. A few doubts regarding certain implications of the restrictions on the grant of development rebate were raised by certain witnesses. Some of these doubts were more imaginary than real. Still we will briefly refer to them here, as they have come from quarters which matter in the field of taxation. It was feared that on a strict interpretation of this clause, development rebate might not be allowed in case machinery or plant was installed in one year and it started operating in the subsequent year. It was also stated that if the provisions in this clause relating to the carry-forward of development rebate were strictly construed in the light of the observations of the Supreme Court,* any development rebate remaining unabsorbed in a year of loss or no income, would not be allowed to be carried forward to the following year. Still another fear expressed was that if 75 per cent. of the development rebate, which was to be set apart as reserve to be utilised in assessee's business, was not required for the needs of that business and was instead kept in Government securities or in a fixed deposit in a Scheduled Bank, the development rebate allowed would be forfeited. It was further stated that in a case where the total income, according to the calculations of an assessee entitled to development rebate, was less than 75 per cent. of the rebate, and he could not, for obvious reasons, set apart the requisite reserves, he would not get the benefit of allowance for the default of not having provided the requisite reserve, if the total income as computed in the assessment was equal to or higher than 75 per cent. of the rebate.

3.28. We find that the elaborate instructions issued by the Central Board of Revenue on this subject, to which we have made a reference earlier, allay all the fears expressed in the preceding paragraph. Thus, it has been specifically provided in these instructions that where the machinery or plant is installed in one year but is brought into use in a subsequent year, the development rebate should be allowed in the year in which the asset is brought into use. It has also been emphasised that where there are variations between the total income as computed by the assessee and as determined by the assessing officer, such variations should be ignored, unless additions made by the assessing officers exceed the returned profits by ten per cent. or Rs. 25,000. Where the additions exceed this limit, the assessing officer should ask the assessee, in writing, to make, within a month, adequate additional reserves in the current year's accounts. Only if the assessee fails to make such a provision within this period, would the development rebate be disallowed. We

*Anglo French Textile Ltd. Vs. C.I.T. (23 I.T.R. 83).

understand that these instructions were made available to public and were issued to chambers of commerce and other associations. We are, therefore, surprised that such doubts should have been expressed by some responsible organisations.

BAD DEBTS AND IRRECOVERABLE LOANS

3.29. Section 10(2)(xi) of the Income-tax Act provides that in the computation of total income, allowance would be made for bad debts and irrecoverable loans arising in the course of a business, profession or vocation carried on by the assessee. This clause casts a duty on the Income-tax Officer to exercise his judgment for determining the fact and extent of irrecoverability of a debt or loan. It was represented before us by a large number of witnesses that this authority was often used by the assessing officer to the disadvantage of the assessee, and the claims for bad debts were negatived as being premature or belated, for one reason or another. This puts the assessee in a very difficult position and many a time he is denied the benefit of this clause irrevocably. The Bombay High Court has referred to some of these difficulties in certain recent judgments and the following extracts from them are of interest.

(a) * ".....An honest businessman takes the view that a particular debt becomes irrecoverable in a particular year and on that basis he claims deduction. It takes a long time before the ultimate decision is given by the Tribunal..... Now, what is the businessman to do. He cannot claim this in the next year because the assessment of that year has long ago been completed. Therefore, the businessman finds himself in this extraordinary predicament that although there is a genuine debt, although that debt some time or other has become irrecoverable and he has never received it, yet by a strange process he can never claim that bad debt as a deduction.

.....We strongly wish to urge upon the Government and the Taxing authority the necessity of some provision in the law whereby it would be open to the Income-tax Officers, if the debt is held to be irrecoverable in a particular year, to permit a deduction in some later year in which the Income-tax Officer finds that the debt in fact became irrecoverable. As the position stands now, the Taxing Department is in this extremely happy position. All that they hold is that a debt becomes irrecoverable in a particular year, that is a finding of fact, that finding cannot be successfully assailed, and having come to that conclusion they can comfortably sit back in their chair and refuse to give any relief to the assessee because they know that the assessee cannot claim it in any subsequent year as the assessment for these assessment years has already been concluded. If the Taxing Department should be strict and severe with business people who seek to evade payment of tax, they should be equally considerate to those business people who honestly claim deductions to which they are entitled in law. This particular case is an illustration of how procedure and questions of limitation can defeat the just claim of an assessee because

*M/s Jekisondas Tribhuvandas, Bombay Vs. C.I.T., Bombay City. (1957) 31 I.T.R. 383.

he has to proceed in the manner laid down in the Act and the Act does not give him the necessary relief in the particular situation in which he finds himself.....”

- (b) *“(.....As we had occasion to point out before, the present Income-tax law with regard to bad debts makes the position of the assessee extremely difficult. He may write off a debt in a particular year and may claim it and the claim may be disallowed. In the next year he cannot make that claim because it would be urged against him that he did not write off the debt in that year. Therefore, the assessee always finds himself on the horns of a dilemma and it is the duty of the Department to take a sympathetic view of the matter if in fact the debt was never recovered. Therefore, if the debt was not allowed to the assessee in the year of account, there is no reason why the Department should not consider allowing him this debt in the next year when admittedly the debt became irrecoverable, although the assessee may not have written it off in that year.”

3.30. We have discussed this issue with the taxing authorities also and the above impressions are corroborated by them. *We feel that when the fact of a debt having become bad is admitted by the Department, it is not proper for the assessing officer to disallow it on purely technical grounds. We note that the Law Commission also examined the provisions relating to the allowance of bad debts, in the light of these practical difficulties and have made certain recommendations. We agree generally with these recommendations and consider that they should be accepted. In our view, if the assessing officer is satisfied about the genuineness of a bad debt, he must allow it either for the ‘previous year’ in respect of which it is claimed or for any of the earlier ‘previous year’ in which, according to the officer, the debt had actually become bad, provided that such earlier ‘previous year’ is not more than four years anterior to the ‘previous year’ in which the debt is claimed to have become bad and actually written off. It follows that the assessing officer should give, in the assessment order for the year in which a bad debt is claimed by the assessee, a specific finding as to when the debt became bad and the assessee should have the right to prefer an appeal against this decision. In other words, the assessee, in his appeal against the assessment, would be entitled to contend that a debt should have been allowed not in the year in which the assessing officer had held it to be allowable but in any of the other assessment years falling within the four years’ period aforementioned, irrespective of the year in which the amount had actually been written off. The appellate authorities should give a definite finding as to the year, within the four years’ period, to which the bad debt relates. The effect of the appellate order should be given by the assessing officer by rectification of the relevant assessment order under Section 35 of the Income-tax Act. The above considerations should equally apply to claims of irrecoverable loans:*

3.31. *We also recommend that in cases where the assessing officer finds that the write off of the debt is premature, he must make a specific note in the assessment records and allow the bad debt in the relevant year irrespective of the fact that the debt had actually been written off in the earlier year.*

*M/s Karamsey Govindji, Bombay Vs. C.I.T., Bombay City. (1957) 31 I.T.R. 958.

3.32. While on this subject we may refer to the representation of the Public Banking Companies Indian Banks Association, Bombay, which stated that considerable infructuous work and inconvenience were accruing from the assessing officers' insistence on examining the bad debts or irrecoverable loans written off by the public banking companies in the same way as they did in the case of ordinary assesseees. The Association explained that the public banking companies stood on a different footing as compared to an ordinary money-lender. A banking company had to be most careful in writing off a loan as irrecoverable and did so only when all avenues of recovery had been exhausted. The Association, therefore, suggested that all writes off of bad debts and irrecoverable loans of a public banking company should normally be accepted by the Income-tax Department, if a certificate was produced from the Board of Directors of that company to the effect that the Board had scrutinised the writes off and was satisfied about the complete irrecoverability of the loans thus written off. The Association also urged that since the Reserve Bank of India exercised sufficient control on the public banking companies which had to send to the former a number of appendices to their balance sheets, giving elaborate details as regards loans, advances, etc., the Income-tax Department should not ask them for all the minute details about these debts.

3.33. We consider that there is a good deal of force in the contention that, for the purposes of bad debt claims, public banking companies should not be treated at par with an ordinary money-lender. *We are of the view that while these companies should continue to furnish lists, giving particulars of all writes off with the names and addresses of the defaulting debtors, amounts advanced, amounts recovered, amounts written off, steps taken to recover, reasons for write-off etc., the assessing officer should not exercise any meticulous check over them, nor call for additional information except in cases where he has reasons to doubt the genuineness or the correctness of the write off.*

MUTUAL ASSOCIATIONS

3.34. We will now consider the administrative difficulties experienced by mutual associations in their assessments. A mutual association is usually organised or conducted for the benefit of its members, its purposes being reciprocal aid and assistance amongst associates and furtherance of a common cause. A mutual association should, by its very nature, be exempt from income-tax on the well-recognised principle that no one can make a profit out of oneself. However, for earning this exemption the association must fulfil the very essence of mutuality *viz.*, the indistinguishability of the contributors of the common fund and the participators in the surplus. If the participators are even partly different from the contributors, there is no mutuality left and the income of the association becomes chargeable to tax. The Income-tax law has, however, made certain inroads in this concept of non-taxability of mutual transactions. Section 10(6) of the Income-tax Act provides for taxing the remuneration received by a mutual association from its members, which is relatable to some specific services performed by it from them.

3.35. In the case of mutual associations carrying on both mutual and non-mutual activities, income from these activities has to be computed separately, as only the income from non-mutual activities is taxable. It was represented that there were many practical difficulties in this segregation, as the expenses were mixed up and it was sometimes well-nigh

impossible to allocate them specifically to mutual and non-mutual activities. The Department usually follows the practice of allocating the non-specific items of expenditure which cannot definitely be related to any of the two activities in the proportion of receipts from them. So long as the mutual activities yield a surplus, a mutual association does not feel the burden of tax on the income of non-mutual activities computed on this basis. However, in other years when there is deficit in mutual activities but surplus in non-mutual ones, and in the net result, there is an overall deficit, the mutual association certainly feels the pinch of tax on non-mutual activities.

3.36. We find that both the Income-tax Enquiry Committee, 1936 and the Taxation Enquiry Commission had examined this issue. The former recommended that long-term administrative arrangements may be entered into by the Department with such associations whereunder the associations would be taxed on the entire surplus of receipts over outgoings without allocation. Annual subscriptions paid by the members should, under this arrangement, be allowable deductions in their hands and the surplus distributed by the association should be allowed as a deduction from its income but should be taxed in the hands of the recipients. *We agree with this suggestion and recommend that Government should take appropriate steps for entering into suitable long-term administrative arrangements with the chambers of commerce, trade and professional associations along these lines.*

3.37. We may mention here that we duly considered the suggestions
 Chambers of Commerce. made for altogether exempting chambers of commerce from tax by a specific provision in the Act, as is obtaining in the United States of America
We do not agree with the suggestion, since we are of the view that the present law which generally restricts the taxation to non-mutual activities is quite fair and equitable and that the long-term administrative arrangements would remove most of the difficulties now experienced.

SECTION 23A COMPANIES

3.38. The law relating to taxability of what have generally come to be referred to as "Section 23A" Companies, has seen many changes and vicissitudes during the recent past. The object of Section 23A of the Income-tax Act is to secure that there is no avoidance of super-tax by shareholders through the retention of earnings in closely-held companies which, being separate entities for tax purposes, are subject normally to lower rates of super-tax than those applicable to shareholders in the upper brackets of income. This problem which is faced in almost all the democratic countries of the world, has, broadly speaking, been tackled in different tax systems in two ways, viz.,

- (i) where undistributed profits accumulate unreasonably (the test being different in each country), the profits are deemed to have been distributed to the shareholders. The tax liability in such an event is on the shareholders unless they are unable to meet it; or
- (ii) an additional tax is levied on unreasonably accumulated profits, this tax being paid by the companies.

The former position obtained in India till 1955 when, on the recommendations of Taxation Enquiry Commission*, the system was switched over to the latter method.

3.39. For the purpose of considering the administrative and procedural difficulties encountered in the operation of this Section, we will pick up the thread of its historical development from the point the Taxation Enquiry Commission left it. That Commission considered the provisions of the then existing section in all its details and implications and made recommendations of a far-reaching character. These recommendations were accepted almost in toto and incorporated in a newly-cast Section 23A which was inserted in replacement of the then existing Section 23A of the Income-tax Act. The new Section also made certain other provisions which had not been suggested by the Commission. These latter provisions related to certain relaxations in the matter of distribution of profits and were along the lines of the provisions in the U.K. Income-tax Act. Sub-section (3) of the newly inserted section provided that if, on an application by a Section 23A Company, the Commissioner of Income-tax was satisfied that, having regard to the current requirements of the company's business or its further development, the payment of a larger dividend would be unreasonable, he might reduce the amount of the minimum distribution laid down in the Section as he thought fit and also determine the period within which the distribution should be made. Sub-section (4) of the Section laid down that if a company, engaged in the manufacture or processing of goods or in the generation or distribution of electricity or any form of power was dissatisfied about the decision of the Commissioner of Income-tax, it could have the matter referred for arbitration to a Board of Referees consisting of two officers of the Central Government not below the rank of Joint Secretary, appointed in this behalf by the Central Government. The decision of the Commissioner or the Board of Referees as the case may be, was to be final as regards the matters concluded by it and no appeal lay to the Appellate Assistant Commissioner or the Tribunal and no reference could be made to the High Court against the decision of Commissioner or the Board of Referees.

3.40. These provisions dealing with the powers of the Commissioner and Board of Referees were repealed in 1957 by the Finance (No. 2) Act of that year and simultaneously, a distinction was introduced between industrial and non-industrial companies in the matter of percentage of profits which had to be distributed if the levy of the penal supertax was to be avoided. Broadly speaking, the percentage fixed was 45 in the case of an industrial company and 60 in others. In the case of investment companies, the percentage continued to be 100. This Finance Act also deleted the provision relating to the carry forward of the undistributed profits of any year in excess of 60 per cent of the distributable profits of that year, to the succeeding three years for set-off against the deficiency of distributed profits. In 1958, a minor amendment was made to this Section which laid down that the Income-tax Officer should not invoke its provisions, if he was satisfied that the payment of a dividend or a larger dividend than that declared would not have resulted in a benefit to the revenue. In the Finance Act, 1959, in consequence of the rationalisation and reduction of rates for company taxation, the statutory percentages for distribution purposes have been increased to 50 and 65 respectively, for industrial and non-industrial companies.

*T.E.C. Report Vol. II, Chapter 11, Pages 180-185.

3.41. The statistical information regarding 'Section 23A' Companies given in Table 1 below makes an interesting reading:—

Table-1.—Assessments of 'Section 23A' Companies

Financial year.	1955-56	1956-57	1957-58	1958-59
1 No. of assessments of companies completed.	17,103	19,853	19,110	19,741
2 No. of Section 23A Companies included in (1) As %age of (1)	6,479 (37·8)	7,066 (35·6)	6,468 (33·6)	6,028 (30·5)
3 No. out of (2) where Section 23A applied. [As a %age of (2)]	86 (1·3)	114 (1·6)	178 (2·7)	188 (3·1)
4. Amount of additional tax demanded. (in rupees)	17,58,767	43,53,128	30,27,798	59,59,761

Presuming that action to levy additional super tax was taken in all the cases where it was warranted, these figures indicate that most of the '23A Companies' conformed to the statutory percentages laid down for distribution of profits and that it was only in a small number of cases that the penal provisions of Section 23A(1) had to be invoked.

3.42. We now consider the various difficulties ventilated before us by several important witnesses. It was represented that the Section in its present form, requiring rigid enforcement of the statutory percentages laid down for distribution of profits caused considerable hardship and had even impeded business and industrial development in certain cases. It was urged that some flexibility should be provided in the statute in this regard, because a number of circumstances and situations could make it really difficult for some companies to conform to the statutory percentages for distribution. For example, funds may be required for urgent replanishments, modernisation programme, rapid expansion to meet the sudden requirements of goods manufactured by a company etc. Again, there may be speculation losses or capital losses during the 'previous year' owing to a natural calamity, and so forth. In such cases, distribution may have to be made out of capital which is prohibited by the Companies Act, 1956. It was, therefore, suggested to us that if the old provisions namely, sub-sections (3) to (5) of Section 23A, which were deleted by the Finance (No. 2) Act of 1957, were restored and the statutory percentages for distribution were scaled down to 45 and 60 for industrial and non-industrial companies respectively, the difficulties would, to a considerable extent, be mitigated.

3.43. We have considered this question carefully. The above suggestion appears to be untenable since it amounts to having the best of both

the provisions. Either the pre-1957 position should be restored in toto, or, if the assessee is keen on having the lower percentage of distribution for industrial companies, they should be prepared to forego the rights available under the repealed sub-sections (3) and (4) of Section 23A of the Income-tax Act. The statutory percentages fixed in 1957, as modified in 1959 consequent on the rationalisation of the company taxation, take into account the general requirements of 'Section 23A' Companies in the corporate sector and are based on the long experience of the working of this Section. These percentages are, in our opinion, reasonable and adequate and leave enough balance with the companies for meeting their capital requirements for modernisation of plant and machinery, development, etc. This is obvious from the figures given in Table—I (paragraph 3.41) which show that during 1953-59, only in about three percent of the assessments of 'Section 23A' Companies, did need a rise for levying additional super-tax under Section 23A of the Income-tax Act. We also find that the present provisions of this Section make adequate safeguards in cases presenting special difficulties, e.g., if a company has suffered losses in the past or its commercial or book profits are small, the penal provisions of this Section may not at all be applied. Besides, the pre-1957 procedure involves considerable delays. We find that some references made to the Board of Referees under the old sub-section (4) of Section 23A are still pending before them. In view of all these considerations, we do not suggest any changes in the existing provisions relating to statutory percentages or the non-availability of administrative discretion for relaxing these percentages.

3.44. In the case of investment companies falling within the scope of Section 23A, of the Income-tax Act, the statute lays down that 100 percent of distributable profits should be distributed, failing which the penal provisions of this Section would be attracted. It was urged that this requirement worked rather harshly and, therefore, the statutory percentage for such companies should be lowered. We do not feel that there is any force in this contention. In our opinion, non-distribution of any portion of distributable profits in the case of investment companies would amount to defeating the very objective of Section 23A.

3.45. Certain hardships in the operation of this Section resulting from the differences in the computations of income made by the assessee and the assessing officers were also brought to our notice. In case the difference between the amount which should have been distributed according to the assessing officer and the actual distribution made by the company falls short of the statutory percentage by more than five per cent of the total income in the case of a '23A Company', (if it is an investment company, it is ten percent instead of five per cent), the penal provisions of this Section become straightaway applicable, and the assessee does not get any opportunity of making up the difference by further distribution. The differences between the two computations may be on account of a *bona fide* misunderstanding, or difference of opinion on the part of the company. It may also happen that the assessing officer arrives at a higher figure of total income owing to a number of additions made by him. It was represented that the margins of error of five per cent and ten per cent laid down for giving a chance to the Company for further distribution were rather low and should be increased.

3.46. These representations are not without force. We, therefore, suggest that the provisions of Section 23A (2) should be so amended as

to provide that the company would get an opportunity to make a further distribution of its profits and gains to make up the statutory percentage, if—

- (a) the distribution made by the company falls short of the statutory percentage by not more than fifteen per cent of its total income, as reduced by the amounts referred to in clauses (a), (b) and (c) of Section 23A(1); or
- (b) the company had distributed not less than the statutory percentage of the total income as reduced by the amounts, according to the return made by it under Section 22(2), but in the assessment made by the assessing officer, a higher total income is arrived at and this difference is due to any reason other than deliberate concealment.

347. We were given to understand that instances were not lacking of companies which made distribution of profits in excess of the statutory percentage in one year, but similar distributions made by them in subsequent years were below the statutory percentages, owing to some practical difficulties. Sub-section (6) of Section 23A of the Income-tax Act inserted in 1955, which was abrogated in 1957, had provided for the carry forward of the excess distribution of a year for being set off against the deficit in the amount of statutory distribution in the three subsequent years. It was represented to us that, instead of making the law so stringent, Government should have provided that, if a company was charged to penal supertax in one or two years for short distribution and in a subsequent year the distribution was in excess of statutory percentage, the excess could be carried back and the proportionate penal supertax already levied and collected be refunded to the company. In this connection, it was suggested that a time period of eight years should be fixed within which internal adjustment of profits distributed could be made, so that the average distributions conformed to the prescribed statutory percentage. We do not agree with this suggestion, as it is bound to create further complications and administrative difficulties. We, however, feel that the provisions of the old sub-section (6) of Section 23A of the Income-tax Act were equitable and easily administrable, and that they should, therefore, be restored.

348. Another difficulty pointed out to us relates to companies having investments in foreign countries, in whose cases the foreign profits cannot be repatriated to this country on account of restrictions imposed by these countries. There is no provision in the Section as it stands at present, that such profits should be kept out of consideration while applying the statutory percentages. Such companies are, obviously, not in a position to comply with the requirements of the Section and are, thereby, subjected to considerable hardship. We, recommend that in cases of this type, such of the foreign profits which could not be remitted and also the taxes thereon should both be excluded in the calculation of the distributable income. Simultaneously, it should be made clear in the statute that if and when such profits are repatriated, they would be included in the distributable income.

349. It was represented that absence of any time-limit for passing an order under this Section gave rise to uncertainty and the companies concerned had the Damocles' sword always hanging over their heads. It is true that the assessing officer has, at times, to wait for full twelve months, after the close of the company's accounting period before he

can know whether the distribution is short of the statutory percentage. This is the time-limit fixed by the Companies Act for holding the annual general meeting of the shareholders of the company for presentation of accounts and distribution of dividends. But this should not be a handle for keeping the action under Section 23A of the Income-tax Act pending endlessly. We understand that because of the lack of any statutory time-limit, some cases under this Section have been pending for over a decade. This state of affairs obviously calls for an effective remedy. Accordingly, we recommend that the time-limit for passing an order under Section 23A of the Income-tax Act in cases of normal assessment should be limited to four years in the same way as for making assessments. Since the Act prescribes that no order under this Section can be passed by an assessing officer without the prior approval of the Inspecting Assistant Commissioner concerned, and the latter must give an opportunity to the company of being heard before he gives his approval, it would have to be administratively ensured that assessment orders in cases of 'Section 23A' companies are passed within a period of three or three and a half years at the most, so that a period of six months to one year is available for passing an order under Section 23A. We would like to make it very clear that the time-limit, for orders under this Section, which we have proposed, should not apply to cases of companies whose assessments are reopened or made under Section 34 of the Income-tax Act.

3.50. It came to our notice that, as a result of a decision given by a Bench of the Income-tax Appellate Tribunal, the mere fact that the articles of association of a company gave general discretion to the directors to allow or disallow transfer of its shares, was being interpreted to mean that the shares of the company were not freely transferable and, therefore, the provisions of Section 23A were attracted. We are of the view that this is not a correct interpretation and, at any rate, it is farthest from the intentions of this legislation. What the assessing officer should really examine is whether, in fact, the shares of such companies were freely 'transferable' during the 'previous year'. He should not be merely guided by the discretionary powers given to the directors in the articles of association. The Central Board of Revenue, we understand, is also of the same view and has since issued instructions* to this effect. In order to put the matter beyond all argument, we suggest that the Act itself may be suitably modified to bring out this meaning.

3.51. Many witnesses pointed out that the penal provisions of Section 23A together with excess dividend tax provisions worked as a double-edged sword. They suggested that either the one or the other of the two provisions should be abolished. There is some force in such a contention but with the passing of Finance Act, 1959, this difficulty is automatically resolved for the future.

3.52. A useful suggestion made in the course of evidence before us was that companies should be permitted to refer to the Department, in advance, the question whether on the facts stated by them, the provisions of Section 23A (1) of the Income-tax Act would be attracted and obtain a clearance so that they may not be in suspense about the applicability of the Section. The views expressed by the Department would be applicable to the case on the basis of the facts stated, but if, in the course

*Central Board of Revenue Circular No. 12-D of 1959, dated 1-7-1959.

of assessment proceedings, the facts were found to be different, the Department would not be bound by the views already expressed by it. *We commend this proposal to the Department for appropriate action through issue of executive instructions.*

SPECULATION LOSSES

3.53. We next turn to the treatment of speculative profits and losses under the Income-tax Act. Distinction between losses from speculative transactions and other businesses for the purpose of set off and carry-forward was, for the first time, made in the Income-tax Act in 1953. A new proviso added to Section 24 of that Act laid down that losses from speculative transactions could not be set off against profits from any other source but only against profits from speculative transactions and, if such losses in a particular year exceeded the speculative profits, the excess would be carried forward to the succeeding years for being set off against speculative profits only. The necessity to enact a distinction between speculative losses and other losses arose, because quite a few instances had come to notice in which bogus speculative losses had been 'bought' by businessmen, with a view to reducing their real taxable income. This practice of buying and selling of speculative losses was being so cleverly managed by manipulations in the accounts of the assessee concerned that they became indistinguishable from genuine transactions. However, lest this sweeping change in law should disentitle the set-off and carry forward of losses in genuine cases e.g., hedging which had to be entered into by the very nature of trade, manufacture, etc., suitable safeguards were provided in the Act by means of the proviso to Explanation 2 of Section 24(1) of the Income-tax Act. In this connection, it may be mentioned that Shri C. D. Deshmukh, the then Finance Minister, while piloting this new proviso through Parliament, gave an assurance that the new provision was not intended to hamper, unnecessarily, certain hedge contracts entered into in the normal course of business. He said:

"The object of this other amendment is to exclude from the category of speculative transactions hedging contracts entered into by dealers and investors of stocks and shares and by members of the forward markets and stock exchanges to guard against loss which may arise in the ordinary course of their business. Now, it is necessary to exclude these transactions from the category of speculative transactions so as not to hamper unnecessarily certain hedge contracts entered into in the normal course of business.

I think I should take this opportunity of generally making clear what the scope of this particular provision is. It is not intended to hit speculative transactions as such. Here we do not take a view as to whether they are good or bad, although it is quite certain that certain speculative transactions are necessary for the purpose of stability of prices and other objectives which are recognised by economists. What we did want to avoid was the buying or selling of losses, that is to say fictitious transactions. But even after consultation with the representatives of stock exchanges we came to the conclusion that there was no direct way of defining, for legal purposes, these particular transactions. Therefore, we have proceeded by the method of excluding what we do not

want to hit. In the Bill, as it is drafted, we have excluded hedging transactions, the common hedging transactions, that is a mill buys cotton and sells cloth. There are various other varieties of hedging transactions and after discussions with the representatives of trade and business I have come to the conclusion that they are also legitimate. One category of transactions is the one I referred to just now: a man wants to protect himself against any loss in certain scripts he holds, but he sells some other scripts which he expects will have a reverse movement. The object is to save that kind of transaction. The other is where there are jobbers and brokers and others—it is their regular business and their ordinary transactions are not transactions such as we want to avoid, namely, selling and buying of losses.”*

3.54 Some witnesses represented before us that the distinction between speculation losses and other losses should be abolished now, because rigorous control on stock and commodity exchanges was being exercised by the Forward Markets Commission and the practice of buying losses had almost disappeared. We are unable to agree with this view because the circumstances which led to the enactment of this provision still exist. To the extent this provision has checked and is still working as a preventive to such bogus transactions, its existence on the statute book is more than justified. *We do not, therefore, consider that any change is necessary in the fundamentals of the provision.*

3.55. An important criticism made by a large number of witnesses who appeared before us, had been that the assurance given by Shri C. D. Deshmukh, with regard to the treatment of *bona fide* hedging transactions as ordinary business, was not being duly implemented. It was stated that the spirit of the amendment had been lost sight of by the Department in the course of administration of the proviso and that sometimes even genuine hedging losses were being treated as speculative losses. In this connection the distinction in the phraseology of clauses (a) and (b) of Explanation 2 to Section 24(1) of the Income-tax Act was brought to our notice. It was pointed out that while one clause made a reference to stocks held, the other did not and that some officers were talking a restrictive view and disallowing the deduction of hedging losses in commodities other than stocks and shares, if they were not against stocks held but against purchases.

3.56. We have examined the issue at some length. We find that even the Central Board of Revenue had put too rigid and restrictive an interpretation on this provision, which is not in accord with the spirit of the assurance given by the Finance Minister. It does not, therefore, surprise us that the assessing officers have also taken an unduly narrow view in the matter and the genuine businessmen have been put to considerable hardship. We certainly appreciate, as we have done earlier, the principle underlying the proviso, but we equally disapprove of its wrong application for denying genuine hedging losses. *We feel that the solution to the various problems which have been brought to our notice in relation to this subject can be found by expanding Explanation 2 to Section 24(1) so as to classify and exclude such transactions which should not come under the mischief of this Section.* The assessing officer

*Parliamentary Debates (Lok Sabha Official Report) page 4544-5, dated 18th April, 1953.

should first examine whether a hedging transaction is genuine or not. If it is a genuine one, and it is by way of future sale of a commodity against stock of the same commodity, the loss arising out of this transaction should be excluded from the purview of speculation. We also recommend that hedging transactions in connected commodities, for instance one type of cotton against another type of cotton, one variety of oilseed against another, gold against silver and vice versa, one type of grain against another should be treated, for the purposes of proviso to Section 24(1), as hedging transactions, provided that the total of such hedging sales does not exceed the actual stock and purchase transactions.

3.57. In the light of the assurance given by the Finance Minister and the subsequent instructions issued by the Central Board of Revenue, it is now well-settled that speculative transactions in different commodities and in different markets are to be treated as one business. Following the same principle, we recommend that losses in bona fide hedging transactions, entered into by a dealer or investor in shares against the holding of his stocks and shares, should be allowed, provided that the hedging transactions are upto the amount of his holdings, even though these transactions may extend to other types of shares not held by him. In fact, the hedging in such cases has necessarily to be in shares other than those held by him.

3.58. The hardship caused by a too literal interpretation of Explanation 2 to Section 24(1) of the Income-tax Act was illustrated to by a case where a dealer having ready cloth business entered into a contract for the purchase of 1000 bales of cloth from a mill on a forward delivery basis. Ultimately it was found that the mill could supply only 980 bales, the remaining twenty bales being rejected on account of some defect and the settlement was made between the dealer and the mill regarding these twenty bales by payment of difference in price. It was stated that even such a transaction was taken by the assessing officers to fall within the mischief of the Explanation 2 to Section 24(1) of the Income-tax Act on the ground that there was no actual delivery of the twenty bales. We are certain that this extreme view could never have been the intention of the legislature, while inserting the Explanation. Since instances of this type have been brought to our notice, we recommend that the intentions of the Government in the matter should be clarified, by suitable administrative instructions.

3.59. More than one witnesses represented to us that, for the purposes of the proviso to Section 24(1), hedging transactions entered into with parties outside the country were not being accepted by the assessing officers at par with similar transactions within the country. We fail to see, much less to appreciate, any logic in this subtle distinction made by the Department. We, therefore, recommend that these transactions should, if they are genuine, be accorded the same treatment as is given to hedging transactions within the country, subject to the same conditions and safeguards.

3.60. Yet another inequitious application of the proviso to Section 24(1) relating to speculative losses was brought to our notice. It was stated that if an assessee earned speculation profits in the 'previous year' and suffered losses in other businesses in that year and he had incurred speculation losses in the earlier years which had been carried forward and were due to be set off against the speculation profits of the 'previous year', the

assessing officers sought to first set off the 'previous year's' losses from the other business against the speculation profits, before setting off the carried forward speculation losses against the latter. *We do not consider that such a procedure is either reasonable or equitable. We recommend that administrative instructions should be issued on this point and if an assessee had earned speculation profits in a year, speculation loss, if any, of that year should first be adjusted against these speculation profits before allowing any other loss to be adjusted against these profits.*

REGISTRATION OF FIRMS

3.61. A firm registered under Section 26A of the Income-tax Act gets certain special concessions, both with regard to the amount of tax payable and the manner of its recovery. However, for getting such a registration, the firm has to satisfy certain conditions laid down in the Income-tax Act and the rules framed thereunder. Thus, the firm must be genuine and constituted under an instrument of partnership which should specify individual shares of the partners. It should apply to the assessing officer for registration within six months of its constitution or before the end of its accounting year, whichever is earlier. It should certify in the application that the profit or losses of the accounting period had been or would be divided or credited to the various partners. The application should be personally signed by all the partners (except minors) and should be accompanied by original partnership deed or a certified copy thereof. The tax benefit flowing from registration can be immense. An unregistered firm has to pay tax, like an individual, on its total income at the rate applicable to that income. In the case of a registered firm, no tax is levied on the firm as such, unless its total income exceeds Rs. 40,000, but the total income is apportioned among its partners, and the tax liability is placed on them at the rates applicable to their individual total incomes, including their respective shares from the firm's income. A firm once registered under Section 26A of the Income-tax Act has to apply annually for renewal of registration. The application for such renewal, duly signed by all the partners individually, has to be filed with the concerned assessing officer, by 30th June of the assessment year.

3.62. It was represented to us that this annual ritual of making an application for renewal of registration was an avoidable formality which only caused unnecessary harassment and hardship. The tax authorities were, however, of the view that since registration and its renewal constituted a concession and a privilege granted by the statute, firms which were desirous of getting these benefits must fulfil all the legal and procedural requirements laid down for this purpose. They were apprehensive that, in the absence of an application for renewal, the assessing officer might not be in a position to know whether the firm had undergone a change in its constitution or a partner had left and so forth. We agree with the Department that the various conditions prescribed for first registration must be fulfilled by a firm, since the assessing officer has also to determine then, whether the firm is genuine or not. But once all enquiries relating to its genuineness have been made and by virtue of its having fulfilled all formalities laid down under the statute, the firm has been granted registration, we see no reason why it should have to apply for

renewal of registration, year after year, despite the fact that its constitution remains unchanged. From the statistics furnished to us by the Central Board of Revenue, we find that 45,216 and 54,634 firms applied for renewal of registration during 1954-55 and 1955-56 respectively. Of these, as many as 44,752 and 54,208 were granted renewal of registration in the two years respectively. Thus, renewal was refused in less than one per cent of the cases. These figures support the view that applying for renewal of registration is a mere formality which can be dispensed with without any loss to revenue. We feel that such a step will considerably remove the inconvenience at present experienced by assesseees and, save the time of the Department as well. We, therefore, recommend that once a firm is registered, there should be no obligation on it to apply for renewal of registration every year, provided that the firm files a declaration along with the return of income to the effect that there had been no change in its constitution. As a safeguard to the revenue, we also recommend, that unless a partner who has left a firm intimates the fact of his having done so to the assessing officer, he will continue to remain liable for the tax on his share of the profits.

3.63. We were given to understand that the Department construed
 Other aspects the provisions of law relating to registration of firms too literally and registration was, at times, refused on account of minor technical defects in the documents and applications presented for registration or in the procedure followed. We feel that while the Department should be fully entitled to enquire whether a firm is genuine or not, the benefit of registration should not be denied to the firm on technical grounds. Without in any way intending to fetter the authority of the assessing officers for going into the genuineness of a firm at any time, we suggest that the Department should point out technical errors, if there are any, in the document or the application for registration and offer the partners of the firm an opportunity to rectify such technical defects within a month. This may be done administratively, and not by a specific provision in the law as recommended by the Law Commission.

3.64. We may refer here to another aspect of the question of registration of firms, to which our attention was specifically drawn by a large number of witnesses. For quite some time, considerable litigation had been going on, in the various High Courts, as regards the legal position for registration of a partnership which originated from a verbal agreement but where the instrument of partnership was executed later. There was a sharp difference of opinion among the High Courts regarding the import of the term "constituted under an instrument of partnership" used in Section 26A of the Income-tax Act. An interpretation put by some High Courts on this phrase was that the partnership must be created and formed under a formal deed and that deed should be a recital of the formation of the partnership and not merely a declaratory memorandum of a pre-existing partnership. A contrary view was taken by some other High Courts. The expression 'under', according to this latter view, was not synonymous with the expression 'by' and, therefore, a firm which had come into existence as a result of an oral agreement was entitled to registration with effect from the date on which it came into existence, provided an instrument of partnership was executed subsequently. The Tax Authority considered that registration should be granted for the full year if the firm was genuine and was in existence at the commencement of the 'previous year',

even though based on an oral agreement, in case the instrument of partnership was drawn up during that year. The issue was very much alive when we received representations and recorded oral evidence. The question has, however, now been settled finally by the Supreme Court* which has held, "that the words 'constituted under an instrument of partnership' include, not only firms which have been created by an instrument of partnership, but also those which may have been created by word of mouth but have been subsequently clothed in legal form, by reducing the terms and conditions of the partnership in writing.....". In effect, the Supreme Court laid down that if a partnership was formed under an oral agreement before or at the beginning of the 'previous year', but had been clothed in a legal form in an instrument of partnership during the course of that year, the firm would be entitled to registration for the assessment year relevant to that year, provided the firm was genuine. From the decision read with the rules regulating the procedure for registration of firms, it follows that, in order to be entitled to the benefit of registration, a firm constituted under an oral agreement must execute a regular partnership deed, in writing, within six months of the date of oral agreement or before the close of its accounting year, whichever is earlier. We consider that this is a satisfactory solution of the difficulty.

3.65. According to the present legal requirements, if one firm enters into a partnership with another firm to form a larger partnership, all the partners of the two smaller firms have individually to sign the partnership deed and the application for registration relating to the larger firm. It was urged that this formality, which caused some practical difficulties, should be dispensed with and it should be enough, for the purposes of registration under Section 26A of the Income-tax Act, if the respective representative partners from the two firms signed the deed and the application. We do not consider that this is legally tenable. What actually happens in such a case is that the partners of the two firms become partners of the larger firm, according to their individual shares. For the registration of the larger partnership, therefore, it is necessary that every partner should sign the partnership deed as well as the application for registration. This view also finds support in a recent decision** of the Supreme Court.

3.66. Our attention was also invited to the difficulty experienced in the matter of registration under Section 26A of the Income-tax Act, when, owing to changes in the constitution of a firm, either during the accounting year or thereafter, the firm as constituted at the time of applying for registration was different from the one or ones during that accounting year. We understand that, in such a case there was uncertainty as to whether the partnership deed governing the firm as constituted at the time applying for registration or the one (or ones) operative during the accounting year would form the basis for the registration order. This uncertainty caused great hardship at times, because there was always a fear, in such cases, of registration being refused on the ground that the correct deed had not been produced in time for registration. *We feel that the most equitable solution for this difficulty would be to provide, in the Act or the Rules, that the firm or firms as constituted during the accounting year should be registered and that the demand should be raised against the partners constituting the firm or firms during that year.*

*M/S R.C. Mitter & Sons. Vs. C.I.T. [(1959) 36 I.T.R. 194]

**Textile Supply Co. Assam Vs. C.I.T. Assam. [(1959) 36 I.T.R. 242]

In order to safeguard the interests of revenue, there should also be a specific provision to the effect that, notwithstanding the provisions of the Partnership Act, the successor firm or its partners would be liable for the tax liability of the succeeded firm, or of its partners. This right should be without prejudice to the legal rights of the Department to recover the tax from the partners of the succeeded firm.

REOPENING OF ASSESSMENTS

3.67. The provisions relating to reopening of assessments under the Income-tax Act have been substantially amended during recent years. At the time the Taxation Enquiry Commission examined the provisions of Section 34 of the Act, there was a time-limit of eight years for reopening of cases where income had escaped assessment or had been under-assessed or excess relief had been allowed due to failure on the part of the assessee to disclose all material facts. In cases where escapement or under-assessment was not due to any fault of the assessee, the time-limit for reopening of assessment was four years only. In any case, the prior approval of the Commissioner for reopening the assessment proceedings by the assessing officer was necessary. The Taxation Enquiry Commission examined the working of the Section in the wider context of the problem of evasion and avoidance of tax, and in the light of similar provisions in other countries of the world. It suggested that, in cases of tax fraud, the time-limit for taking action under this Section should altogether be removed. As regards the other cases, the Commission was of the view that the time-limit of four years should stay. It also recommended the deletion of the provisions relating to the prior permission of the Commissioner for initiating proceedings under this Section.

3.68. During 1954 and 1956, Section 34 of the Income-tax Act was substantially recast to meet the difficult situation arising out of certain pronouncements of the Supreme Court which struck down the material provisions of the Taxation on Income (Investigation Commission) Act, 1947. While doing so, the recommendations of the Taxation Enquiry Commission were also taken into consideration. The amendments made to the Section provided that there would be no time-limit for reopening of assessments in cases where the deliberate concealment etc., of income for one or more years was one lakh of rupees or more and, that such assessments would be reopened only with the prior approval of the Central Board of Revenue. However, no action could be taken for an assessment year prior to the year 1940-41. For other cases of deliberate concealment, etc., *status quo* was maintained as regards the time-limit for initiating action. The time-limit for completing the proceedings, thus initiated, in either category of cases was removed. As regards the remaining cases where the under-assessment, etc., was not due to assessee's failure or fault, the condition of prior approval of the Commissioner to initiate the proceedings was removed. A newly-inserted sub-section *viz.*, sub-section (1-B) of Section 34 provided for settlements by assessee with the Central Board of Revenue in regard to their tax liability in fraud cases relating to the period 1941-48.

3.69. It was strongly represented before us that there should be a finality to assessment proceedings at some stage because the absence of any time-limit for opening or reopening the past assessments caused interminable harassment and kept assessee constantly under the Damocles' sword for an indefinite length of time. It was impossible for them to retain books of account

and mass of vouchers for an endless period. The fear of reopening of the case at any time, it was pointed out, went on dogging them in their life time and, their successors thereafter.

3.70. Another aspect of the administration of this Section brought to our notice was that the assessing officers, many a time, reopened cases on uncertain grounds and on the basis of insufficient information and that after initiating such proceedings they carried out fishing enquiries for getting at some material for making a re-assessment. It was stated that some of these proceedings had, subsequently, to be dropped because of the lack of any material. In this process, considerable avoidable inconvenience was caused to the assessee concerned. It was pointed out that this position had come to pass owing to the refusal of the Department, in consequence of a judgement of the Madras High Court,* to give to the assessee a copy of the reasons on the basis of which approval of the Commissioner for initiating action under Section 34 of the Income-tax Act had been obtained. It was also mentioned to us that even the Commissioners, at times, approved of such proposals without examining whether the grounds on which action was proposed to be initiated, were adequate.

3.71. We made a careful study of these problems. We strongly feel that no quarter should be shown to those indulging in fraudulent practices in tax matters and the tax dodger should always be under fear of and subject to being tracked and properly booked. We find that in U.K.**, U.S.A.**, Canada** and many other countries** there is no time-limit for reopening assessments in cases of tax frauds. Again, we do not find any special merit or virtue in reducing the time-limits for initiating action in other cases. We are, therefore, of the view that the present provisions of Section 34 of the Income-tax Act, in so far as they relate to the time-limits for initiating action, should continue. *For mitigating other hardships that were brought to our notice, we suggest that, before reopening an assessment, the assessing officer should intimate to the assessee the grounds on which action is proposed to be taken and the assessee should be given ten days' time to send his reply.* It is after the consideration of the reply of the assessee that the decision to reopen the case under Section 34 should be taken or the Commissioner or the Central Board of Revenue should give sanction for action. This procedure would eliminate the possibility of roving enquiries on vague grounds and the Commissioner or the Central Board of Revenue would also be having a complete picture of the case before he or it passes orders on the assessing officer's proposal. Such a procedure is already being followed in respect of proposals which are to be approved by the Board, though a reservation has been made there, that in cases where the Commissioner considers that the intimation of these reasons would be risky to revenue, no such prior intimation may be given by the assessing officer. We do not think there would be many cases involving such a risk and, in any event, the assessee would know immediately on receipt of a notice under Section

*The Presidency Talkies Ltd. Vs. The Addl. I.T.O., City Circle II, Madras [(1954) 25 I.T.R. 447]

**Section 47(1) of the U.K. Income Tax Act.

Section 6501 of Internal Revenue Code of U.S.A.

Section 46(4) of Canadian I.T. Act.

Section 172 of Australian Income-tax Act.

34(1) (a) what the Department is after. Therefore, in our opinion, there is no need for making any reservation of this type in the proposed procedure. Our recommendation also implies that the assessing officer should confine the re-assessment proceedings only to the points intimated to the assessee.

3.72. The Bombay High Court held in the case of *S. C. Prasher Vs. Vasantsen Dwarkadas** that that part of the second proviso to Section 34(3) which provided for initiating action against any person other than the assessee in pursuance of any findings or direction contained in an order under Sections 31, 33, 33A, 33B or 66A of the Income-tax Act was void as offending Article 14 of the Constitution, since such action could be initiated without giving that outsider any opportunity of presenting his version of the matter. It was stated that this interpretation caused administrative difficulty in the initiation of proceedings against such persons. We are of the view that our proposal for intimating to a person the grounds on which his case is to be reopened, before actually doing so, would resolve this difficulty. In this connection, we have also noted the recommendations of the Law Commission which, in effect, suggest a procedure similar to what we have proposed.

3.73. We also agree with the Law Commission's recommendation that in the case of an assessee who files a return or revised return under Section 22(3) of the Income-tax Act, the Department should statutorily have, at least, one year's time, from the date of filing of such a return, for completing that assessment. It can happen that an assessee files a return on the last date of the limitation period of four years prescribed under Section 34(3) for completion of assessments. In such an event, the Department shall have to complete the assessment on that very day, failing which any further action in that case would be barred by limitation. This difficulty has been duly appreciated by the Supreme Court in a recent judgment.† *Accordingly we suggest that Section 34(3) of the Income-tax Act may be suitably amended along the lines indicated by the Law Commission.*

3.74. It was represented to us that the provisions of the Income-tax Act with regard to the reopening of assessments were to the advantage of revenue only. The assessee could not claim reopening of an assessment for the same length of time, even though there had been over-assessment in his case by reason of some error or mistake in the return or statement made by him for the purposes of assessment. It was urged that provisions similar to Section 66 of the U.K. Income Tax Act, 1952 should be incorporated in the Indian Income-tax Act and the other direct taxes Acts, so as to put an end to the present anomalous and inequitable position. Section 66 of the U.K. Income Tax Act, 1952, *inter alia*, provides for an application, for appropriate relief, by an assessee within six years of the end of the assessment year in cases where the assessment made is considered to be excessive by reason of some error or mistake or statement made by him for the purpose of that assessment. The decision of the taxing authorities on such appli-

* (1956) 29 I.T.R. 857.

† C. IT. Vs. Ranchordas Karsondas [(1959) 36 I.T.R. 569].

cations is appealable to Special Commissioners and a reference lies, to the High Court on points of law involved in the matter.

3.75. We have examined this matter in the light of the existing provisions of the various direct taxes Acts relevant to this issue, and we find that there are adequate safeguards already provided in these Acts for relief in cases of over-assessments. We are discussing these provisions in the next Chapter on "Appeals and Revisions". In view of this, we do not consider that there is any need for incorporating, in these Acts, provisions similar to Section 66 of the U.K. Income Tax Act.

3.76. It was suggested to us that the assessee should have a right to get his case reopened in respect of a legal issue decided against him by the assessing officer, if the High Court or the Supreme Court gave, subsequently, a ruling on the same issue favourable to the assessee. This proposal, it was suggested, was being made in view of the fact that the Department reopened cases on issues which were decided by the High Courts or the Supreme Court in its favour. We do not approve of this practice since it is a negation of equity and fair play. Likewise, we do not accept the suggestion that the assessee should have a similar right. *We are of the definite view that neither the assessee nor the Department should be entitled to reopen assessments already concluded merely because the High Courts or the Supreme Court has, subsequently given a decision which was contrary to the view previously taken by the Department.*

TAXATION OF NON-RESIDENTS

3.77. The determination of tax liability of a non-resident in respect of income arising or deemed to arise through or from 'business connection' is a difficult problem, both legally and administratively. While taxing such a person, not only have the interests of revenue to be safeguarded but care has also to be taken to see that it does not hamper the foreign trade. From an administrative point of view, it is difficult to serve processes and sanctions on the non-resident, and it, therefore, becomes necessary to hold a resident person, having 'business connection' with the non-resident as agent of the latter and make him responsible for the tax liability of the non-resident principal. The various provisions of the Income-tax Act dealing with the tax liability of the non-residents and their agents in India have been enacted, keeping these aspects of the problem in view.

3.78. Section 4 of the Income-tax Act, *inter alia*, lays down the basis of the tax liability of the non-residents. It seeks to include in the tax-net all incomes accruing, arising or received or deemed to accrue, or arise or deemed to be received by the non-resident in India during the 'previous year'. Section 42 of that Act amplifies and elaborates the income 'deemed to accrue or arise' within the taxable territories, by listing five categories of such income. These are incomes which accrue or arise, whether directly or indirectly, through or from any (a) business connection, (b) property, (c) asset or source of income, (d) money lent at interest and brought into the taxable territories either in cash or in kind; and (e) the sale, transfer or exchange of a capital asset in India. A non-resident is liable to tax in his own

name or in the name of his agent. The agent in such cases is an assessee for all purposes of the Income-tax Act.

3.79. Out of the above five categories of incomes, the one which is of the greatest importance is that which relates to 'Business Connection' income accruing or arising from any 'business connection' in the taxable territories. Read with Section 42(3) of the Income-tax Act, it would be seen that only such profits and gains as are 'reasonably attributable to that part of the operations' which is carried out in the taxable territories are 'deemed' to accrue or arise in India. The term 'business connection' has, however, not been defined in the Act. The absence of such a definition has caused considerable uncertainty as to its precise meaning and application. There have, consequently, been several complaints of harassment as well as a good deal of litigation on this issue.

3.80. It was represented to us that the term 'business connection' should be statutorily defined so that the liability of the non-residents and their agents might be clearly and precisely ascertainable. It was stated that the uncertainty inherent in the existing position acted as a damper on India's foreign trade. It was also suggested that this term should embrace only 'trading in India' and not 'trading with India'. Various chambers of commerce and trade associations also stressed that the provisions of Sections 42 and 43 of the Indian Income-tax Act should be brought statutorily at par with the corresponding provisions of the U.K. Income Tax Act.*

3.81. The Taxation Enquiry Commission, which considered this question, was of the view that it was impracticable to define this term so as to cover all possible transactions within a few well-defined groups. The difficulty at precisely defining this term has also been referred to in a recent judgment of the Bombay High Court.**

3.82. 'Business connection' is different from 'business' as defined in the Income-tax Act. Various judicial decisions have laid down certain broad principles for interpreting the term 'business connection'. It is now well-settled that three conditions must be fulfilled to establish a 'business connection, viz., (i) there should be a business in India; (ii) there should be a connection between the non-resident assessee and that business, and (iii) that the non-resident must have, directly or indirectly, earned income by virtue of or through such connection. Thus, an isolated business transaction between a non-resident and a resident in India, without any regular course of dealings does not amount to a 'business connection' and it does not attract the application of Section 42 of the Act. 'Business connection' can be said to exist only if there is some nexus or continuity of relationship between the non-resident and the resident so that an income accrues or arises to the non-resident from such connection. In cases where there is an element of agency between the non-resident and the resident, a 'business connection' undoubtedly exists. In the absence of such an agency, where the non-resident sells goods to or purchases goods from isolated merchants in India, no 'business connection' as such is established. But the cases falling in between these two extremes give rise to

*Sections 363 to 373 of the U.K. Income Tax Act, 1952.

**C.I.T. Vs. Evans Medical Supplies Ltd., [(1959) 36 I.T.R. 418].

difficulties, for a 'business connection' can subsist even without a regular agency or branch established in the taxable territories.

3.83. Though the Taxation Enquiry Commission had concluded that it was impracticable to define the term 'business connection', it recommended that the Central Board of Revenue should issue comprehensive instructions on the subject. We understand that the Board has already issued detailed instructions in which it has been made clear that there would be no tax liability on the non-resident exporter, if the sales are at an arm's length as principal to principal, and the non-resident exercises no control over the principal in India. As regards the liability of a non-resident under Section 4(1)(a) of the Income-tax Act, the assessing officers have been directed that no attempt should be made to assess him on receipt basis in cases where the shipping documents are discounted by a bank in his own country and are handed over for collection to a banker in India who present the sight or usance draft to the resident importer. Even if the documents are not so discounted by the foreign exporter in his own country but are handed over in India on payment, no attempt is to be made to bring the operation within the scope of Section 4(1)(a). Further, in view of the changed conditions of export trade in India, instructions have also been issued by the Central Board of Revenue to the effect that where it is clear that the resident person acts in the usual course of his business in making purchases for the non-resident, no attempt should be made to treat the resident commission agent as an agent of the non-resident party under Section 42 of the Income-tax Act, merely on the ground that the net profit shown by the resident party is very small.

3.84. We have carefully considered the various suggestions for restricting the scope of the term 'business connection' either by definition, specific statutory exclusions or by executive instructions. We have also examined the provisions of the U.K. Income Tax Act, according to which non-residents are assessable when there is any factorship, agency, receivership, branch or management in the United Kingdom and profits or gains arise, directly or indirectly, through or from such definite connections. *We are of the view that in the present context of economic conditions obtaining in this country there can be no question of adopting provisions, similar to these in the U.K. Income Tax Act for taxing non-residents.* We appreciate the fact that the position stands clarified considerably as a result of the circulars issued by the Central Board of Revenue and the objections raised by the assesseees have been largely met by them. But it has been urged that the foreign trader is not aware of these executive instructions and that, in any case, he would like to be assured of his liability under the law. *We recommend that these executive instructions should be widely publicised both within and outside the country.* In the foreign countries these instructions could be given publicity through Indian Embassies and Trade Commissioners so that the foreign traders and investors may become fully aware of the restricted scope of the term 'business connection' as mentioned in Section 42 of the Income-tax Act. We also suggest that the Government may consider the feasibility of adding an explanation to Section 42(1) of the Act to incorporate the spirit of the various circulars and instructions issued by the Central Board of Revenue in regard to the term 'business connection'.

3.85. Another practical difficulty brought to our notice was that the assessing officers were reluctant to issue certificates of tax liability asked for under the second proviso to Section 42(1) of the Income-tax Act. Under this proviso, an agent of a non-resident person or any person who apprehends that he may be assessed as such an agent, may require the assessing officer to issue a certificate stating amount of his estimated liability, so that he may, on the authority of this certificate, retain with himself the stated amount out of the funds belonging to the non-resident. *We are of the view that all such requests should be attended to promptly, and, in any case, should be disposed of within one month of their receipt.* We need hardly emphasise how small delays in these matters can adversely affect the country's foreign trade.

3.86. It was also pointed out to us that, at times, assessment proceedings were started simultaneously, both against the non-resident as well as his 'agent', in respect of the tax liability of the non-resident. This causes considerable hardship. *In our opinion, such simultaneous proceedings should be avoided and the Department should make up its mind whether to proceed against the non-resident directly or through his agent.*

PLACE OF ASSESSMENT

3.87. The place of assessment under the Income-tax Act is regulated by the provisions of Section 64. This Section lays down *inter alia*, that where an assessee carries on business, profession or vocation at any place, he would be assessed by the assessing officer of the area in which that place is situate. If there are more than one such places, the assessment would be made by the assessing officer in whose jurisdiction the principal place of business, profession or vocation lies. In other cases, where a person does not carry on any business, profession or vocation, he is assessable by the assessing officer in whose jurisdiction he resides. The place of assessment for purposes of wealth-tax, expenditure-tax and gift-tax assessments is the same as for income-tax.

3.88. However, exigencies of administration and the need for proper investigation may require, at times, a departure from these normal rules. Accordingly, sub-section (5) of Section 64 of the Income-tax Act provides that the normal provisions regulating the place of assessment shall not be applicable in those cases where the jurisdiction is specifically transferred to a particular assessing officer under Section 5(7A) of the Income-tax Act or where it is fixed under Sections 5(2), or 5(6) of the Act.

3.89. Some witnesses represented that the present provisions regulating the place of assessment gave immense power to the administration and that they denied the assessee the fundamental right of appeal against the administrative determination of the principal place of business. We feel that the existing provisions lay down sufficiently elaborate and equitable procedure for the determination of the place of assessment and provide adequate administrative safeguards to the assessee against wrong determination of jurisdiction. We are also of the view that the jurisdiction in revenue matters should be considered on a different footing from that in civil and criminal proceedings and so long as an assessee is duly liable to tax, he should not be allowed to defeat the interests of

revenue on frivolous objections regarding jurisdiction. Accordingly, we are of the view that it is not necessary to make a statutory provision for an appeal by the assessee against the determination of the place of assessment.

3.90. The term 'principal place of business' is not defined in the Act. However, judicial pronouncements have placed its meaning beyond any doubt. Thus 'principal place of business' is the place from where the business is controlled and managed, wherefrom superintendence and direction ensue. This place may not be the one where the goods are sold or orders are conversed, nor where the business has extensive operations in commercial sense.

3.91. We understand that, in view of the above interpretation, some persons are being assessed not at the place of their main operations, but at a place where they open small offices only for the purposes of superintendence and direction of the operations. This, in our opinion, is not in the best interests of revenue, because it is difficult to have a correct idea of the extent and details of the business activities of the persons concerned, at a place different from that where the business is mainly done. *We, therefore, suggest that where an assessee has more than one place of business, profession or vocation, the assessments should be done at the place which is the most important from the point of view of his business operations. For this purpose, the case may be transferred, if necessary, to the assessing officer of such a place under Section 5(7A) of the Income-tax Act.*

3.92. A doubt was expressed by some witnesses as to whether the place of business referred to in Section 64 of the Income-tax Act meant the place where the assessee carried on the business during the accounting period or the place where he carried it on during the assessment year. *We recommend that it should be made clear that such place should be taken in relation to the assessment year and not the 'previous year'.*

3.93. Representations were also made to the effect that the assessee should be entitled to raise objections against the determination of the 'principal place of business' at any time. It was also pointed out by some witnesses that even when an objection was properly raised, the assessing officers did not submit the matter for the orders of the Commissioner, which they should do according to the provisions of law, but instead they went ahead with the assessment proceedings. While we feel that the present provisions entitling the assessee to raise objections against the jurisdiction before the filing of the returns are adequate and no further right need be given in this regard, *we recommend that suitable administrative steps should be taken to put a stop to the illegal and incorrect practice of some of the officers to proceed with the assessments without referring the assessee's objections about jurisdiction to the Commissioner, although the objections had been raised by the assessee in time.*

3.94. Some witnesses brought to our notice that there were frequent changes in jurisdiction and, at times, assessee were bewildered as to who was their correct assessing officer. We appreciate that administrative needs, sometimes warrant such changes but *we would suggest that by proper planning and forethought, frequent changes of jurisdiction should be avoided.*

3.95. We consider that, in one respect, there is need for a clarification of the provisions of Section 64 of the Income-tax Act. In a case which is transferred from one assessing officer to another and where proceedings under Section 34 of the Income-tax Act relating to the assessment year(s) during which the case was under the jurisdiction of the former officer, have to be initiated, there exists, at present, an uncertainty as to which of the two officers is legally competent to start such proceedings. This uncertainty has been set at rest in respect of the cases transferred from one officer to another under Section 5(7A) of the Income-tax Act, as according to the Explanation added in 1956 to this Section, the officer to whom a case is transferred is competent to finalise "all proceedings under this Act in respect of any year which may be pending on the date of transfer 'and also' all proceedings under this Act which may be commenced after the date of the transfer in respect of any year". *We recommend that the provisions of this Explanation should be made applicable to all cases where jurisdiction is transferred from one officer to another.*

3.96. It appears that in spite of the detailed procedures prescribed by the Department for ascertaining whether the profits of the branch of a business, profession or vocation are being assessed in the hands of the head office by the assessing officer having jurisdiction over the latter, due check in the matter is not being exercised by the assessing officers. Again, the assessing officer seldom makes enquiries from the officer in whose jurisdictional area the branch is situate about the extent of the branch business and its probable profits. We are of the view that this lack of cross-checking makes the assessment of profits relating to branch businesses somewhat unreal. *We recommend that there should be proper record of all the branches in an Income-tax Circle and regular verifications should be made as to whether their profits are being shown and assessed in the assessments of the respective head offices. Similarly references should be made, as frequently as necessary, by the assessing officers, assessing businesses having various branches to the assessing officers in whose jurisdiction the branches are situate for ascertainment of the correct profits of the latter.* Officers assessing companies at their registered offices which are located far away from their factories should ascertain from the officers in whose jurisdiction the factories lie, the nature and extent of local purchases, the details of labour employed and such other particulars as would be useful in checking the accounts of those companies and arriving at their correct total income. For this additional work, the latter category of officers should get suitable credit in their quota of disposals and the Inspecting Officers should exercise a regular control and periodic check of this work. *We recommend that the Central Board of Revenue should take suitable steps for this purpose.*

DEFINITION OF INCOME

3.97. It was stated by some witnesses that the absence of any precise definition of the term 'income' in the Income-tax Act led to many difficulties in assessments and resulted in a good deal of litigation. It was suggested that a definition should be attempted on the basis of the long line of judicial pronouncements on the subject so that some precision could be attached to its connotation. We find that this question was also examined by the Taxation Enquiry Commission* in India and by the

*T.E.C. Report, Vol. II, Chapter III, Pages 40-41.

U.K. Royal Commission* of 1951. Both of them came to the conclusion that no real advantage could result from the introduction of a general definition that had to cover so multifarious a subject as 'income' for the purposes of taxation. In fact, the Taxation Enquiry Commission were of the opinion, "that perhaps more harm than good may result from including in the Taxation Act a rigid definition of 'income'". We are in complete agreement with these views and feel that apart from the difficulties involved in attempting an exhaustive definition of 'income' such a definition would be subject to frequent legislative changes, consequent on the emergence of new situations not envisaged in that definition.

DEFINITION OF EXPENSES

3.98. Some witnesses urged that in the light of the various judgments which had settled the question of allowability or otherwise of the various categories of expenses in the context of the phrase 'wholly and exclusively' laid out for the purposes of business, profession or vocation..... occurring in Section 10(2) (xv) of the Income-tax Act, such types of expenses as had been held to be permissible deductions in computing the total income should be enumerated in the Act itself. We are of the view that this will not serve any useful purpose. Wherever the allowability is settled finally, the tax-payers are already well aware of that. We would, however, like to mention a few categories of expenditure which, in our view, should be allowed, since their disallowance or uncertainty about their allowability causes great hardship. We enumerate and briefly discuss these items below:

- (a), It is a moot point, at present, whether interest paid or payable on monies borrowed by a partner for investing in the firm as his share of capital is an allowable deduction against his share of profits from the firm. *We are of the view that such an interest should be allowable in the same way as it is allowed under Section 10(2) (iii), to an assessee carrying on business, profession or vocation, in respect of the capital borrowed for that business etc. We see no reason for making a distinction between these two types of cases. Of course, suitable safeguards should be provided against abuse of this allowance by assesseees who, having sufficient capital of their own, resort to use it as a measure for avoidance of tax.*
- (b) The expenditure incurred in connection with a newly started business for the period during which the business activities have not commenced is not allowed, at times, on the ground that it has not been incurred in connection with the business or in the course of carrying on the business. There are some conflicting judicial views** expressed on the admissibility of such expenditure. *We recommend that the position should be clarified and that all those expenses which would have been allowed, if the business was being carried on, should also be allowed when incurred in the course of activities leading to commencement of business.*

* U.K. Royal Commission Report, Page 7, para 27.

** C. Parekh & Co. (India) Ltd. Vs. C.I.T. (1953) 24 I.T.R. Page 24. Western India Vegetable Products Ltd. Vs. CIT Bombay City (1954) 26 ITR 151. Associated Mining Industries Ltd. Vs. C.I.T. (1955) 27 I.T.R. 429.

- (c) Under administrative instructions, the cost incurred by an assessee in connection with the settlement of his income-tax liability before the assessing officer is, at present, being allowed in the computation of his assessable income from business, profession or vocation. It was represented to us that the expenses incurred in appeals as well for settling liabilities before the assessing officer in respect of income from sources other than business, profession or vocation and under the other direct taxes Acts should also be allowed as deduction in the Income-tax assessment. As regards the costs at the various appellate stages, we are discussing the question in the Chapter on Appeals & Revisions. But so far as the question of costs relating to settlement of liabilities before the assessing officer under the direct taxes Acts other than the Estate Duty Act is concerned, we feel that the demand is justified. *Accordingly, we recommend that the expenses incurred by an assessee during the assessment proceedings for settlement of his liabilities under all the direct taxes Acts, other than Estate Duty Act, should be allowed in computing his total income.*
- (d) It was brought to our notice that some hardship was caused to the assessee engaged in mining industry on account of the disallowance, for income-tax purpose, of the amount of royalty which has initially or periodically to be paid in connection with the leases for extracting minerals or the right to work mines. Initially, a capital payment may have to be made either in lieu of or in addition to royalty, in the form of a premium on lease. Periodically, royalty may be payable on the basis of production or profits or on the basis of a combination of both. But out of all these payments, only the royalty payable on the basis of output is clearly admissible under the Income-tax Act. When it is payable on any other basis, its admissibility is determined by properly constructing an agreement which regulates such royalty. There is a long line of judicial dicta laying down broad principles for determining this question. But it was pointed out that these payments of royalty, whatever their mode of calculation and howsoever they may be judicially interpreted, have to be made for the purposes of working the mines and extracting minerals. There is great force in these arguments and we feel that disallowance of royalties in the assessment cases of mining industry would obviously hamper its development and ability to compete in the world markets. Since the Mineral Concession Order, 1949 prohibits the payment of any capital sum as premia or salami and also requires that the royalty payable should be related to output, these difficulties are not likely to arise in future. We also understand that most of the old deeds which provided for royalties based on criteria other than output have been replaced by new deeds drawn up in accordance with the Mineral Concession Order, 1949. However, in the few cases where the lease deeds continue on old basis, royalty may not be taxed to the extent of the amount which would have been admissible if it were calculated as prescribed in Mineral Concession Order, 1949.

RIGHT SHARES

3.99. According to the present practice of taxation, the entire sale proceeds of the bonus or right shares are treated as income chargeable to tax without taking into account the reduced value of original holdings. It was represented to us that this was unfair. We find that, in actual practice, there is always some reduction in the value of the original shares when bonus shares are declared. We, therefore, suggest that it would be equitable if in computing the profits made in the sale of right or bonus shares, a reduction is allowed for the fall in the value of the original shares. The procedure that may be adopted in this connection could be illustrated by the following example:—

An assessee had originally purchased 100 shares at the rate of Rs. 150 per share. The market value of these shares just before the issue of bonus shares was Rs. 165 per share. The company issued 50 bonus shares against these 100 shares. In the wake of this issue, the market value of the shares of this company fell to Rs. 110 per share, at which price the assessee sold the 50 bonus shares. The profit on the sale of these shares would be worked out as under:—

	Rs.
Market Value of 150 shares @ Rs. 110 - per share	16,500
Less Cost of 100 original shares @ Rs. 150/- per share	15,000
Net profit	<u>1,500</u>

PROBLEMS RELATING TO OTHER DIRECT TAXES ACTS

3.100. We now proceed to discuss certain aspects of the recently introduced direct taxes. One of the most difficult problems in the administration of these taxes is the valuation of various types of assets. This problem is of a recurring type in wealth-tax cases, and also assumes a fairly great importance in estate duty and gift tax matters. The frequency of the problem in the income-tax cases is also not insignificant particularly with the fast rate at which buildings and other construction activities are progressing. Before considering the various difficulties involved in valuation, it would be helpful to recall the salient features of the procedures under the new direct taxes Acts in which the question of valuation crops up.

3.101. Under the Wealth Tax Act, the net taxable wealth, broadly speaking, includes the market value of the various types of assets owned by a person less his liabilities. The market value is to be taken as on the last day of the 'previous year' followed by that person, and in case he follows more than one 'previous years' for his different activities, the last day of the latest 'previous year'. Under the Gift-tax Act, the value of the asset gifted is taken to be its market value on the date of the gift. For estate duty purposes, valuation of the estate of the deceased is to be made as on the date of his death. Thus, all these Acts have a common concept for valuation of assets liable to the respective tax or duty, viz., 'market value' on a particular date. This problem of 'market value' therefore, recurs with unending frequency in connection with one or the other Act.

3.102. According to the existing provisions of these Acts, the assessee shows in the statements accompanying his return of wealth, gifts or estate duty, what according to him is the 'market value' of his assets on the particular date specified by the respective statutes. This value may be accepted by the assessing officer. But if he does not accept it for sufficient reasons, he has to make his own determination. The matter ends if the valuation arrived at by the assessing officer is accepted by the assessee. Otherwise the latter goes in appeal to the Appellate Assistant Commissioner (except in estate duty cases where the first appeal lies to the Central Board of Revenue)* who may confirm the valuation or modify it. If the decision at that stage is not acceptable to either party, an appeal can be preferred to the Appellate Tribunal by the aggrieved party. At this stage, the Tribunal may, *suo moto*, or at the instance of the assessee, refer the matter of valuation to the arbitration of two valuers, one each to be appointed by the two parties to the appeal. The two valuers may give a unanimous report about valuation which, under the statute, is final and binding on all concerned. In case they disagree, the matter is referred to a third valuer who is either an agreed one by the two parties or appointed by the Tribunal. In the event of disagreement between the parties about a common name. The decision of the third valuer is final and no further appeal on the point of valuation lies to the High Court. Valuers are appointed from among the persons who are approved as 'Valuers' by the Central Board of Revenue. There are different categories of valuers for valuation of various types of assets. The Central Board of Revenue has laid down, for each category, certain qualifications which must be fulfilled by a person before he applies for being approved as a valuer. The Board also maintains a panel of such valuers, which is published in the official gazette at periodical intervals.

3.103. The Central Board of Revenue, we understand, has issued general instructions laying down broad principles which should be followed by the assessing officers in the valuation of various types of assets. In addition to these instructions, the assessing officers also make use of the information gathered by them from internal and external sources.

3.104. Some witnesses were of the view that valuation of assets was a specialised field which required expert knowledge. As the assessing officers could not be expected to possess that knowledge, the valuation made by them was likely to give rise to multiplicity of appeals. It was also suggested that the assessing officers had to face an uphill task in the matter of valuation since the assessees usually produced valuation certificates from experts. The valuations made by the assessing officers against those of the experts were sometimes upset in appeal on the ground that the officers were not experts. We received numerous suggestions for resolving these difficulties. Two important proposals related to the creation of a Central Valuation Department under the Central Board of Revenue and of making the machinery of arbitration by the two valuers available at the assessment stage itself instead of at the appellate stage before the Tribunal or the Board, as obtaining at present.

*When the Estate Duty (Amendment) Act comes into force the first appeal in an estate duty case will be heard by the Appellate Controller and appeal against his order will lie to the Tribunal.

3.105. It was claimed in favour of a Central Valuation Department that since it would consist of specialists the valuation made by them would carry weight both with the assesseses and the appellate authorities. Consequently there would be improvement in the quality of assessments and a reduction in appeal work. The proposed department would also ensure uniformity in the valuation of some type of assets as against the incongruous position obtaining at present, when different assessing officers placed different valuation in different cases on the shares of the same company or managing agency or life interests etc. It was stated that in the United Kingdom, a Central Valuation Department was working satisfactorily for estate duty valuation matters and was also undertaking valuation of assets entrusted to it by other government departments.

3.106. The idea of a Central Valuation Department was opposed by quite a few witnesses on the ground that it would be an uneconomical proposition and its achievements would not be commensurate with its cost. To make it really effective, it would be necessary to have a full-fledged department with offices all over the country and with specialists in all fields, but the work-load is so small comparatively that those specialists would be idle and wasting their energies most of the time. It was also pointed out that the large variety of local conditions in the various parts of this vast country would not let the proposed department improve upon the present procedures for valuation of immoveable assets, unless the department spread out to tehsil or talukua level so as to be conversant with the local conditions. This would make the Department unwieldy and a white elephant.

3.107. After consideration of the various *pros and cons* of the proposal, *we are inclined in favour of a Central Valuation Department in this country, since we feel that it would be advantageous to both the Tax Authority and the assessee.* However, in the context of the present needs in the matter of valuation which are not so pressing yet, *we suggest that a modest beginning may be made by creating a valuation cell in the Central Board of Revenue. This cell may start with valuing shares of limited companies so that there is proper coordination and uniformity in the valuation of shares of different companies and of shares of the same company by different officers. With gain in experience, the cell may extend its valuation activities to other categories of assets in due course and ultimately mature into a full-fledged valuation department.*

3.108. We are not in favour of the second suggestion, *viz., that the arbitration by valuers should be brought down to the assessment stage. We are satisfied that the present procedure provides sufficient safeguards to the assesseses and the bringing down of arbitration machinery to the level of assessment stage would cause inordinate delays in the completion of assessments. We understand that when the matter of valuation is referred to the arbitration of valuers, there is no knowing as to the time which they would take in giving their report. Instances were brought to our notice in which the valuers had already taken two years and still the reports were awaited. In the light of this experience, we feel that it would be inadvisable to experiment with the arbitration at the assessment level. However, in the interest of expeditious disposal of appeals involving the valuation of assets which have to be referred to arbitration by valuers, we suggest that in cases where the valuation of more than one type of category of assets is in dispute, it should be permissible for the assessee as also the Department to name a valuer for all types of*

assets instead of naming separate valuers for each of the type or category of assets.

3.109. While on the subject of delays in the submission of reports by the valuers appointed as arbitrators in the course of appeals before the Tribunal or the Central Board of Revenue, we recommend that, as under the Arbitration Act, if a valuer does not give his verdict or award within six months, he may apply to the Tribunal or the Board, as the case may be, for extension of the time upto a maximum of three months for submission of the award. If even thereafter the award is not made, the right to claim arbitration should be forfeited unless the Tribunal/Board decides that a further extension should be given.

3.110. We also recommend that with a view to securing better administration, less appeals and stability in the matter of valuation under the Wealth Tax Act, the value of an immovable property adopted for one assessment and accepted by the assessee should not normally be disturbed for a period of five years.

3.111. The present procedure of approving valuers for appointment for the purposes of valuation under the Estate Duty, Wealth Tax and Gift Tax Acts came in for considerable criticism. It was suggested that the procedure of naming the approved valuers in a list and the publication of this list amounted to making invidious distinction amongst the professionally qualified persons. It was also represented that there existed an uncalled for distinction as between the different categories of valuers for being approved for this list. In the case of architects, surveyors and engineers the qualification required for being approved as a valuer is only a practical experience in the line for a specified period viz., ten years. But for Chartered Accountants and valuers of jewellery, not only ten years' experience is required but it is also necessary that they should have handled a specified quantum of professional work. It was stated that this distinction was not logical and was quite arbitrary and should, therefore, be abolished.

3.112. So far as Chartered Accountants are concerned, we feel that since they are duly qualified professional people and there is a central body, viz., the Institute of Chartered Accountants of India to regulate their conduct, the qualification of ten years' practice in the profession should be enough to entitle them for being approved as valuers, and there should not be any further condition with regard to the number of concerns audited or their working capital etc. This position, however, does not obtain in the case of persons seeking to be approved as valuers for valuing jewellery. In their case, their standing as well as actual experience in the field of valuing jewellery are equally important. In this view of the matter, we feel that the conditions prescribed by the Central Board of Revenue for appointment of valuers in jewellery do not warrant any change.

3.113. It was represented to us that the present practice of valuing shares of companies, which were not quoted in the market, on the basis of 'break-up' value was causing considerable hardship. Such mode of valuation placed the shareholders of these companies at a distinct disadvantage vis-a-vis the shareholders of public companies, for it was fairly well-recognised that the break-up value of the shares of a well-known public company was invariably more than their market value. We appreciate these difficulties and suggest that the procedure for the valuation of shares may be modified. Where quotations are available in the stock exchange, the latest quotation anterior to the valuation date should be adopted. In

other cases of public limited companies, where shares are not quoted in the stock exchanges, the value of their shares may be taken at the price at which transfers of a bonafide character have been made before the valuation date. In the case of shares of private limited companies, the break-up value should not be the only criterion for determining the value of the shares, but all other relevant conditions and factors should also be taken into consideration. The Valuation Cell that we have proposed should, when constituted, give these points due consideration.

3.114. Many witnesses were of the view that the Department's practice of rigidly following the formula of taking the market value of the buildings as twenty times the annual municipal rental value less permissible expenses led, in quite a few cases, to over-valuation in wealth-tax assessments. Some of the buildings may be quite old and even dilapidated and yet may have considerable rental value. It was stated that municipal valuations had, of late, been steadily and sometimes steeply increased and to connect them with the market value of the properties in all cases would not be correct. We are of the view that in the absence of any readily available data about the market value of a property, some alternative criterion has to be resorted to for arriving at its market value, and the municipal valuation is atleast a sound basis in principle. *But we consider that the formula of taking the valuation as twenty times the municipal rental value, less permissible expenses, should not be so sacrosanct as to be inviolable. We suggest that this formula should not be applied too rigidly and due regard should be had for other relevant factors including the age and condition of the building.*

3.115. An anomolous position obtaining, at present, in the matter of valuation of life interest in a trust property, which was brought to our notice was that the life interest had, in some cases, been computed at a figure which exceeded the total value of the trust property in which the life interest rested. This is a most illogical result and we accordingly recommend that in no case should be a life interest be valued at a figure exceeding the value of the trust property. Nor should there be double assessment of the same assets in the hands of the trust and the person who is entitled to a life interest in that trust. *The value of life interest which is assessed in the hands of the beneficiary should be deducted in the assessment of the trust and the principles laid down in Sections 41 and 9(3) of the Income-tax Act should be followed in this connection.*

3.116. We also recommend that the Central Board of Revenue should formulate rules for the valuation of annuities and make them available to all chambers of commerce and other bodies.

3.117. Some witnesses mentioned that some difficulty was being experienced in the matter of valuation of the compensation claims in respect of the assets left in Pakistan at the time of partition. It appears that the Department takes the face value of these claims, that is to say, the value for which the claims have been admitted by the Rehabilitation authorities of the Government of India. On the other hand, the tax-payers are of the view that the value of these claims should be that which can be realised in the market. *We feel that the correct and equitable basis would be the realisable value basis and not the face value one.*

3.118. The administration of Wealth-Tax Act is only two years old and except for the problem of valuation to which we referred in the foregoing paragraphs, no other serious difficulties were pointed out to us. We, however, note that by a recent

amendment* a new sub-clause (iii) has been added to clause (m) of Section 2 of the Wealth Tax Act, 1957, whereby any tax, penalty or interest payable under the Income-tax Act, Wealth Tax Act, Gift Tax Act, Expenditure Tax Act or Estate Duty Act which is outstanding on the valuation date, either because it is contested in appeal by the assessee or because it has not been paid for more than twelve months, is not to be allowed as a deduction in the computation of the net taxable wealth. We are of the view that this provision, in its present form, is likely to cause hardship, particularly in cases where the amount is contested in appeal. We agree that this provision is necessary where the assessee deliberately defaults in payment and, to that extent, it should stay. *But for cases where the tax is disputed and, therefore, not paid, a provision should be made in the statute that, for Wealth-tax purposes, the disputed liability would be adjusted by rectification as and when the appeal is decided.*

3.119. Some difficulties regarding the allocation of liabilities in relation to assets chargeable to Wealth Tax and those which are exempted from this tax were brought to our notice. It was stated that some assessing officers were making the allocations on arbitrary basis. *We suggest that executive instructions, prescribing broad bases for a rational allocation of such liabilities, should be issued by the Central Board of Revenue.*

3.120. It was represented by some chambers of commerce that once an assessee admitted a certain amount of expenditure in his return, the Department should not go into its details, since it was purely his personal affair. It appears that some assessing officers have been asking for such details. This should not have happened, because we note that this point has already been made abundantly clear by the Central Board of Revenue in its instructions in the matter of administration of Expenditure Tax Act. It was stated in these instructions that there should be no occasion to go into the details of expenditure, if no exemptions or deductions were claimed in respect thereof. *We, however, recommend that this point should be further emphasised and effective steps should be taken to ensure that Expenditure Tax Officers do not make any roving enquiries, once the expenditure is admitted.*

3.121. Estate Duty Act has been on the statute book now for about six years and its administrative machinery is fairly well-established. Recently, many of its difficulties were resolved by a fairly comprehensive amendment of the various provisions through the Estate Duty (Amendment) Act, 1958. In the course of our enquiry, we found that there was hardly any complaint about the administration of this enactment. In the following paragraphs we are referring to certain aspects of estate duty assessments which came to our notice as not having been covered by the Amendment Act.

3.122. We understand that there being no statutory time-limit for completion of estate duty assessments, some of the cases drag on indefinitely for one reason or another. The Department being in no hurry, at times, takes a liberal view of the non-cooperative and dilatory attitude of some accountable persons. *We recommend that there should be a statutory time-limit of four years, from the date of filing of the return, for the completion of an estate duty assessment. In those cases where ex-parte assessments have to be made, the time-limit should be four years from the date the return was due.*

3.123. Some witnesses pointed out that because the Assistant Controller of Estate Duty was usually a different person from the Income-tax Officer who had assessed the deceased to Income-tax during the latter's life-time, certain differences of opinion could and did arise on certain issues common to both income-tax and estate duty assessments even though those points had been settled in income-tax assessments. For resolving this difficulty we suggest that in the mofussil circles, the same officer who assesses the assessee for the other direct taxes should also deal with the estate duty cases, as far as possible. So far as the City Circles dealing with estate duty assessments are concerned, there is a definite advantage in continuing them, as they are.

3.124. Certain difficulties arising out of the disallowances of bona fide liabilities and debts discharged after the death of the deceased, who had life interest in the impugned property were brought to our notice. We consider that where an accountable person discharges the debts or other liabilities of the deceased and the Department is satisfied that such discharge is bona fide such debts should be allowed to be deducted from the value of the life interest in the trust or other property.

3.125. It was represented to us that the present provision requiring the verification in the Estate Duty Return to be made before a Magistrate was unnecessary and caused avoidable inconvenience. We agree with this view. We do not see how a verification before the Magistrate makes it more worthy of credence or open to severer action than otherwise. We, therefore, suggest that this requirement may be removed and that the accountable person should be required to make verification in the estate duty return in the same manner as an assessee does in the income-tax return.

3.126. We were told that revenue authorities of the various states took considerable amount of time in intimating the value of agricultural property to the Estate Duty Authorities and sometimes for plots of the same kind and in the same area, they intimated widely different figures. These factors delay the assessments and also cause embarrassment to the Department. We suggest that such delays and discrepancies should, whenever they come to notice, be brought to the notice of the State Government concerned who should take prompt and appropriate action on such complaints.

3.127. Gift-tax Act came into operation with effect from first April, 1958. The experience of the administration of this measure is, therefore, very limited so far. No difficulties of any consequence were pointed out to us in the course of oral evidence or in the representations sent to us. A mention was, however, made to us regarding some interesting results of the system of rebate on voluntary advance payments of gift-tax, prescribed in Section 18 of the Gift-tax Act. We are discussing this matter in the Chapter on "Collection and Recovery".

CHAPTER 4

APPEALS AND REVISIONS

INTRODUCTORY

The statutory powers enjoyed by the authorities administering the direct taxes Acts appear to be large but, in effect, they are not altogether unlimited. An important restraining influence is the review and re-determination of executive decisions by the appellate and revisionary authorities. While the right to go in appeal or revision is a powerful factor in preventing the growth of an arbitrary and discriminatory administration, its effectiveness depends upon the circumstances governing the exercise of that right and the efficiency with which the authorities discharge their duties. We consider in the following paragraphs the various modifications which, in our opinion, are necessary for improving the efficiency of the existing system as well as imparting into it a still greater degree of sense of justice.

APPELLATE ASSISTANT COMMISSIONERS

4.2. At present, an appeal before the Appellate Assistant Commissioner represents the first stage of appeal under the direct taxes Acts other than the Estate Duty Act where the first appeal Administrative Control lies to the Central Board of Revenue. When the Estate Duty (Amendment) Act comes into force the first appeal would lie to the Appellate Controller of Estate Duty. The Appellate Assistant Commissioners function under the direct control of the Central Board of Revenue which exercises local administrative control through the Commissioners. At the same time, it is provided in the statute itself that no orders or instructions should be given by the Central Board of Revenue so as to interfere with the discretion of the Appellate Assistant Commissioner as an appellate authority. Even so, it was represented to us that as long as their advance in service depended upon the good opinion of the Commissioners and the Central Board of Revenue they would not be able to bring to bear on the appeals heard by them an independent judgment and that their decisions would tend to be influenced by a predilection in favour of revenue. It was, therefore, urged that the Appellate Assistant Commissioners should be removed from the control of the Central Board of Revenue and placed under the Ministry of Law. There was almost a near unanimity of opinion amongst the taxpaying public in this regard. We find that this demand had been made previously also before both the Income-tax Investigation Commission and the Taxation Enquiry Commission.

4.3. The Appellate Assistant Commissioners as a distinctive institution came into being only in 1939. Prior to that, the Assistant Commissioners were looking after appeals in addition to their supervisory and administrative duties. The change was effected on the recommendations of the

Income-tax Enquiry Committee, 1936 which had felt that the right of an assessee to go in appeal before an Assistant Commissioner was illusory as the very order appealed against might have been framed under the Assistant Commissioner's directions. It had also pointed out that the Income-tax Officers were not likely to approach an Assistant Commissioner freely for advice on points of difficulty when the Assistant Commissioner combined in himself both appellate and executive functions. It had, therefore, suggested that there should be a clear division of these two functions and that each branch of work should be handled by a separate agency. Consequently, changes were effected and appellate work came to be attended to exclusively by Appellate Assistant Commissioners while the administrative work came to be looked after by Inspecting Assistant Commissioners. The point stressed before us was that the purpose with which the institution of Appellate Assistant Commissioners was brought into being had not been fulfilled and was not likely to be fulfilled as long as they continued to be under the control of the Central Board of Revenue.

4.4. The Income-tax Investigation Commission (1948) had recommended that "the experiment begun in 1939 should be carried forward and Appellate Assistant Commissioners should be removed from the control of the Commissioners and the Central Board of Revenue and placed under the Appellate Tribunal".* However, in 1952, the Income-tax Investigation Commission (with different personnel), on a reconsideration of the matter, expressed itself in favour of the continuance of the Appellate Assistant Commissioners under the control of the Central Board of Revenue as, in its opinion, no change was called for either on principle or by the result of past experience. The Taxation Enquiry Commission as also the Law Commission went into this question in detail and concluded that there was no reason for effecting any change in the present set up.

4.5. The arguments advanced in favour of the continuance of the present system may be summarised as follows:

- (1) The Appellate Assistant Commissioners are and were always meant to serve as nothing more than senior officers of the Department for reviewing orders passed by the junior assessing officers.
- (2) Statistics prove that in the vast majority of cases decided by the Appellate Assistant Commissioners either the decisions have been accepted by the assesseees or have been confirmed in subsequent appeals, thereby proving that they have been acting independently and judiciously.
- (3) Their removal from the control of the Central Board of Revenue will create serious administrative problems, the most important of which will be the loss of benefits now arising from interchange of administrative and appellate functions which give Inspecting and Appellate Assistant Commissioners practical experience of both administrative and appellate work as well as the need for providing an avenue of promotion to the Appellate Assistant Commissioners.

*Report of the Income-tax Investigation Commission, para 319, page 143.

4.6. In our opinion, the above arguments are not unassailable. At present, a case goes before an Appellate Assistant Commissioner only when an assessee prefers an appeal to him. The Department cannot go in appeal before the Appellate Assistant Commissioner on an order passed by an assessing officer. Under such circumstances, it cannot be suggested that the Appellate Assistant Commissioners were meant to act or have been acting as mere reviewing officers. Moreover, in view of our recommendations that in all important cases assessments should hereafter be completed under the guidance and immediate supervision of the group Assistant Commissioners, there does not seem to arise a need for another set of officers of equal status for acting as reviewing officers. The assessee has always looked upon the Appellate Assistant Commissioners as appellate officers and this in itself is of great significance. In fact, we found that our suggestion for doing away altogether with this stage of appeal was not acceptable to most of the assessee. They argued that on account of the comparatively lower amount of costs involved, the appeal before the Appellate Assistant Commissioners represented the only stage at present where every assessee could afford to go in appeal and seek redress.

4.7. In support of the impartiality and judicious spirit shown by the Appellate Assistant Commissioners, statistics were quoted to show that more than 90 per cent of their decisions were either accepted by the assessee or confirmed in further appeal. This aspect of the problem was stressed by the Income-tax Investigation Commission (1952), the Taxation Enquiry Commission and the Law Commission. The statistics furnished to us also do not disclose any different picture. However, many witnesses pointed out that the acceptance of the decisions of the Appellate Assistant Commissioners should not be taken as an admission by the assessee of the correctness of the decisions. According to them, a large number of appellants have acquiesced in the decisions of the Appellate Assistant Commissioners only because they did not consider it worthwhile to agitate the issues further.

4.8. As regards the administrative difficulties envisaged, we do not consider them insurmountable. They can be got over by placing the services of these officers on deputation for a period of three to five years under the Ministry of Law. Under such a scheme, the benefits arising from the inter-change of administrative and judicial functions would still be available and the future prospects of the officers would not also be impaired.

4.9. Removal of the Appellate Assistant Commissioners from the administrative control of the Central Board of Revenue would also help in completing the process of separating the judiciary from the executive. In matters like this, due consideration has to be given to the feelings of assessee and justice should not only be done but it should also appear to be done. Therefore, without casting any reflection on the working of the Appellate Assistant Commissioners and acknowledging the fact that their independence and judicious outlook have not been interfered with in any manner by the Central Board of Revenue or the Commissioners of Income-tax, we recommend that the Appellate Assistant Commissioners should be transferred from the control of the Central Board of Revenue to that of the Ministry of Law.

4.10. Another suggestion we have to make is with regard to the distribution of work amongst the Appellate Assistant Commissioners. At present, their jurisdiction is generally defined in relation to Income-tax Circles in contiguous wards or districts. The result is that an Appellate Assistant Commissioner has necessarily to deal with appeals of varying degrees of importance. In such a system, appeals involving complicated questions of fact and law do not always receive the attention they deserve. We feel that these appeals could be tackled better if they were all concentrated in ten or twelve ranges under experienced appellate officers. Such a measure would also be welcomed by assesseees as it would tend to avoid delay in the disposal of complicated cases. It would also secure that the knowledge and experience of senior Assistant Commissioners are utilised in the disposal of more important appeals. Both the appellants and the Department would have the satisfaction that the cases had been gone into thoroughly and that the decisions were arrived at after looking into all the aspects of a case. Such a system exists already in places like Bombay and Calcutta where appeals from Central Charges and Company Circles have been grouped together in a few selected ranges. *We consider that this practice should be extended to other charges as well so that, by and large, the appeals from Central Circles, Special Circles and Company Circles as well as in other cases involving large sums in dispute are distributed in about ten or twelve such appellate ranges all over India.* Since the responsibilities of the Appellate Assistant Commissioners hearing these appeals would be greater and more onerous than those of other Appellate Assistant Commissioners, we are recommending in the Chapter on Administration that they should be given a special pay of Rs. 150 as is now admissible to Assistant Commissioners holding posts of Deputy Directors of Inspection or the Inspecting Assistant Commissioners in the Central Charges.

4.11. In our opinion, there is scope for improvement in the method of working of the Appellate Assistant Commissioners which would make for quicker disposal of work and also redress the grievances of appellants. *Though there are already administrative instructions in this regard, still we consider that the following points deserve special mention:*

Improved methods
of work

- (1) The offices of the Appellate Assistant Commissioners should, as far as possible, be located near the Income-tax offices. This would add to the convenience of the appellants as well as their representatives.
- (2) The relevant assessment records should invariably be obtained sufficiently in advance of the date of hearing and the Appellate Assistant Commissioners should study them beforehand so that the appellants do not have to wait unnecessarily nor adjournments granted merely because the case papers had remained to be perused.
- (3) Notices of hearing should be served at least 15 days prior to the date of hearing.
- (4) The Appellate Assistant Commissioners as well as the appellants should adhere to the appointments given, as far as possible. If, for unavoidable reasons, the hearing of an appeal has to be adjourned the appellant as well as his representative should be informed sufficiently in advance.

Appellants also should apply for adjournments well in time and not wait for it till the last moment.

- (5) Wherever possible, the assessing officers should personally attend the appeal hearings.
- (6) Holding discussions with Income-tax Officers in the absence of the appellants should be avoided.
- (7) Appellate Assistant Commissioners should exercise their discretion for condoning delays in the filing of appeals in a sympathetic manner.
- (8) The Appellate Assistant Commissioners should, as far as possible, dispose of cases according to the dates on which the appeals have been instituted but where the amount of tax in dispute is substantial and the tax has been held in abeyance till the disposal of the appeal, such cases may be given priority.
- (9) If a substantial point comes up in an appeal before an Appellate Assistant Commissioner for different years, he should decide the case for the earliest year and it may be taken up by the assessee or the Department to the Appellate Tribunal and from it to the High Court as a test case for further decision.
- (10) If, in a case before an Appellate Assistant Commissioner, a point which is pending decision by the higher appellate authorities arises, the appeal should be kept pending by him.
- (11) The Appellate Assistant Commissioners should not set aside assessment orders except in cases where the circumstances leave them no choice in the matter. It should particularly be ensured that setting aside of assessments is not sought by the Department or the Appellants for merely gaining further time or to gain a chance to put in additional evidence.
- (12) The orders should be passed as early as possible after the last hearing, and in any case not later than 15 days from that date.
- (13) The appellate orders should be communicated to the appellants and the Department within a week of the date of the order.
- (14) Instead of sending merely true copies, as they do, at present, the Appellate Assistant Commissioners should invariably send, in the very first instance itself, certified copies of their orders to the appellants and the Department. This will obviate the need for making a special request for a certified copy for filing an appeal before the Appellate Tribunal. It would also help in resolving the type of difficulties which arose in the case of Malayalam Plantations Limited.*
- (15) In cases of transfer of Appellate Assistant Commissioners, they should decide all the appeals heard by them before handing over charge. In respect of part-heard appeals also, if the proceedings have been continued for a considerable

period of time, an endeavour should be made to complete them and pass final orders before handing over charge. In regard to cases which are necessarily to be left part-heard, Appellate Assistant Commissioners should leave complete and detailed notes on the files regarding the hearings already given.

APPELLATE COMMISSIONERS

4.12. With the transfer of the Appellate Assistant Commissioners to the Ministry of Law, a new agency will be required for exercising day to day administrative control over their work. For this purpose we recommend that two Appellate Commissioners should be appointed for the whole of India. These Commissioners will also carry out annual administrative inspections of the Appellate Assistant Commissioners with a view to ensuring quicker disposal of work and the maintenance of uniform standards in their approach to problems. In addition to the administrative duties, they would hear appeals under the direct taxes Acts on assessment orders passed by the Inspecting Assistant Commissioners. After the Estate Duty (Amendment) Act comes into force, they would also function as Appellate Controllers of Estate Duty for hearing appeals. The Appellate Commissioners would be officers of the same rank and status as Commissioners but function under the administrative control of the Ministry of Law.

APPELLATE TRIBUNAL

4.13. The Appellate Tribunal came in for some criticism at the hands of both the tax-paying public as well as the Department. It was suggested to us that modifications were necessary with regard to its composition, functions, powers as well as the method of work to make it a more effective and efficient organisation. Reviewing the manner in which the Appellate Tribunal had been conducting itself, the Law Commission has commented as under :

"The Tribunal is constituted the final fact-finding authority for four taxes,—income-tax, wealth-tax, expenditure-tax and gift-tax, and it is also proposed to make it the final fact-finding authority under the Estate Duty Act. We are constrained to observe that men of the requisite calibre and independence are not being recruited for discharging so heavy a responsibility as that of the final fact-finding authority under the new pattern of taxation. There are many complaints that the disposal of appeals by the Appellate Tribunal is very unsatisfactory for a variety of reasons. Often, the judicial and independent approach which is necessary in the final fact-finding authority, is not displayed by the Tribunal. In several cases the determination of complicated questions of fact and law is done in a very perfunctory manner. Very often, the Tribunal does not clearly record its findings of fact or its reasons for arriving at its findings. In a number of cases, factual or legal contentions raised by the parties are not dealt with at all, resulting in applications for rectification being made subsequently to the Tribunal for considering the points omitted to be dealt with in the original order of the Tribunal. While dealing with the references under Section 66(1) and Section 66(2). High Courts had occasion to comment upon the unsatisfactory nature of the orders passed by the

Appellate Tribunal and also on the unsatisfactory statements of case drawn up by them in the references under Section 66. The High Courts had to remit the cases to the Appellate Tribunal for a further and better statement of the case with fuller particulars. To give satisfaction to the large number of assesseees, a decision of an independent and good appellate authority is an undoubted necessity, if justice is to be done to them. There is considerable delay in disposing of the appeals and very often it is said that they, the Tribunals, spare very little time for the appellate work with which alone they are concerned. Very often the Members of the Tribunals attend the sittings at any time they choose, thereby not conforming to regular office hours, for the disposal of the work. A Bench of two members of the Tribunal hears the appeals, but in practice the contribution to the decision of the case by one of the members is often not appreciable." *

The Law Commission has recommended that, in view of the defects pointed out by it, the Appellate Tribunal should be abolished and that a direct appeal should be provided on questions of fact as well as of law to the High Court, from the decisions of the Appellate Assistant Commissioners where the amount in dispute was Rs. 7,500 and above, and in other instances, appeal should lie to the High Court on questions of law alone.

4.14. While we agree that there is definite scope for improvement in the methods and procedures of work of the Appellate Tribunal as well as in its composition, we do not favour its total abolition. *The need for such an organisation is clear to us.* The Appellate Tribunal was brought into existence to fulfil the wide-spread demand of assesseees for appealing to an independent body on important questions of fact. Nothing has been suggested to us to show that the desire has in any way subsided. It is interesting to note that in countries like U.K. and U.S.A. where tax systems have been in vogue for a long time, such an independent appellate agency exists. The Special Commissioners in U.K. and the Tax Courts in U.S.A. serve the same purpose which is expected of the Appellate Tribunal in India. The reasons for this are not far to seek. The taxing statutes are complicated and technical and they require a high degree of specialised knowledge of both accountancy and law, which can be gained only by a continual and exclusive concern with them. The judiciary of the land cannot be expected to go into the minute technical and accounting aspects involved in tax appeals. *The Appellate Tribunal, consisting of equal number of judicial members and accountant members, is, to our mind, best suited to deal with the problems arising from the administration of the taxing statutes.* Apart from this, the main justification for the continuance of the Appellate Tribunal is that the High Courts, as at present constituted, will not be able to devote sufficient time to dispose of the large number of cases, which are now being dealt with by the Appellate Tribunal and which will have to go up to them under the Law Commission's proposal. The High Courts are already over-burdened and according to the Law Commission itself, the total number of cases pending before all the High Courts as on 1st January, 1957, was 1,32,476 of which 31,402 were pending before the High Court of Allahabad alone. The pendency as on 30th June 1959 was ascertained to be 1,85,607, the High Court of Allahabad still leading with 46305. Even

* Law Commission of India Twelfth Report, para 93, page 48.

the references made to them under the taxing statutes have been outstanding for quite a long period. On an average 400 to 500 reference applications are being filed every year but out of this the High Courts are able to dispose of only some 200 to 300 cases and the remaining add up to the arrears. The total number of such reference applications pending in all High Courts as on 1st April, 1959 was 1,889, and at the present rate of disposals it may take well over six years for the High Courts to clear the pendency. As against this, the number of appeals filed during an year before the Appellate Tribunal comes to more than 13,000, the pendency on 1st April, 1959, before the various Benches of the Tribunal being as high as 17,118. Even assuming that only 50 per cent of the appeals would be taken to the High Courts under the procedure suggested by the Law Commission, the resultant increase in the volume of work will still be so large that not one but several Benches for dealing with appeals under the direct taxes Acts will have to function in each of the High Courts. As we are emphasising later in this Chapter, it must not be forgotten in this connection that both in the interests of revenue as well as assesseees it is imperative that tax appeals and reference applications are dealt with expeditiously and not allowed to drag on for an unduly long time. In view of all these factors, we do not think it is either practicable or advisable to make the High Courts the forum for discussion of facts also. *We are, therefore, convinced that the Appellate Tribunal cannot be dispensed with and should continue.*

4.15. While recommending the continuance of the Appellate Tribunal, we feel that every effort should be made to enhance its prestige in the eyes of the public as well as the judiciary. We consider that this could be achieved best by the appointment of a High Court Judge as the President of the Appellate Tribunal. By this, not only would the status of the Tribunal be enhanced but also criticism of the type made by the Law Commission would be obviated. *We recommend, therefore, that a serving High Court Judge should be deputed to act as President of the Appellate Tribunal by the President of India for a fixed tenure.* The emoluments and other conditions attached to the post should be suitably enhanced and a convention should be established for considering the President of the Appellate Tribunal for higher offices. It is only because of this recommendation that a High Court Judge should be appointed as President that we are suggesting later in this Report, the grant of various additional powers to the President of the Appellate Tribunal. In para 4.45 of this Chapter, we are suggesting that he should be empowered to refer cases directly to the Supreme Court in suitable cases. We are also recommending in the Chapter on Administration that he should have the power to pass orders on the findings given by the Disciplinary Committees of the Institute of Chartered Accountants and the Bar Councils on complaints against members of the accountancy and legal professions practising before tax authorities.

The Appellate Tribunal consists of judicial and accountant members appointed by the Central Government. Judicial members are selected out of persons who have for a period of 10 years held a civil judicial post or been in practice as an advocate of a High Court. The accountant members are appointed from amongst the Chartered Accountants and Registered Accountants who have at least 10 years of experience as well as out of persons who have qualifications and adequate experience considered suitable by the Central Government for appointment to the Tribunal. Opinion was divided about the usefulness of appointing offi-

cials of the Department as accountant members of the Appellate Tribunal. While many felt that such a procedure had obvious advantages inasmuch as, with their previous knowledge and experience of tax matters, they would be able to dispose of appeals more expeditiously and pass realistic orders, there were others who considered that such members would be unduly biased in favour of revenue.

4.16. The Income-tax Investigation Commission had stated that it would be advisable to recruit members from the judicial and Income-tax Departments, if men with requisite qualifications and experience from legal and accountancy professions were not forthcoming in sufficient numbers. It, however, felt doubtful whether successful members of these professions would come forward to accept the posts of members of the Appellate Tribunal at the existing level of emoluments and other conditions of service. The President of the Appellate Tribunal, who appeared before us, as also others expressed the same doubts in the matter.

4.17. We agree that successful members of these two professions would not generally be willing to appear before the Union Public Service Commission for being selected for the posts and serve as members at the existing scale of pay and other conditions of service. However, in the face of the trend of opinion which does not favour any general increase in the emoluments of public servants, we are hesitant to propose any enhancement in the present scales of pay except for the President of the Tribunal. We have, throughout the Report, generally refrained from giving any opinion on the scale of emoluments of officials because the matter has been dealt with only recently by the Central Pay Commission. We understand that previously there was a convention by which one-third of the posts of accountant members in the Appellate Tribunal used to be filled up by senior officers of the Department. As, however, during the last two or three years suitable candidates were not forthcoming from the accountancy profession, the vacancies have been filled up by recruiting larger numbers from the Department. Thus, in recent years the trend has been to confine the recruitment of accountant members largely to the members of the Income-tax Department. Similar considerations also hold good with regard to the recruitment of judicial members from the legal professions. In view of these factors, the best course would appear to be to appoint, as members of the Appellate Tribunal, competent members of judicial and revenue services who have still to serve for a period of 10 to 15 years. *We, therefore, recommend that, as far as possible, officers of the Department of the status of Commissioners of Income-tax or Assistant Commissioners senior enough to be appointed as Commissioners should be selected for appointment as accountant members.* Once an officer of the Department has been selected as a member of the Tribunal, he should not be allowed to revert to the Department. *We also recommend that, as far as possible, serving District and Sessions Judges should be selected for the posts of judicial members.* It should not be necessary for these officers to apply formally for appointment as members of Tribunal and the Central Government should, on their own, make the selection. We are of the view that the practice of appointing members on a contract basis should be discontinued and that all appointments should be on a permanent basis with adequate pension benefits. With a person of the eminence of a High Court Judge as its President and persons of the experience and qualifications we have suggested as its members, we believe that the requisite degree of knowledge of law and accountancy based on practical experience would be provided and the Tribunal would be able to command the respect of the taxpaying public.

4.18. With regard to the distribution of appellate work among the different benches of the Tribunal, we have no doubt, that the President would consider the feasibility of hearing the most important appeals by benches constituted of senior members and himself. As far as possible, the Tribunal should give reasoned and detailed orders giving full facts and findings so that a clear picture of the issues involved, the arguments advanced and the conclusions arrived at would emerge. The difficulties experienced by the Department and the assesseees would be reduced if greater attention is paid by the Tribunal to this aspect of the problem. This would also meet to a great extent the criticism levelled by the Law Commission. Once the Tribunal succeeds in inspiring confidence in the minds of the taxpaying public about its competence and impartiality by the manner in which it conducts itself, the taxpayers will have much less occasion for seeking further judicial review of its orders.

4.19. Under the Wealth-tax, Expenditure-tax, Gift-tax and Estate Duty (Amendment) Acts, the Appellate Tribunal has powers to enhance an assessment or penalty. No such powers exist under the Income-tax Act. A suggestion was made to us that powers of enhancement should be granted under the Income-tax Act also. As the Appellate Tribunal is the final fact-finding authority and no remedy is provided to the assesseees for going in appeal on questions of fact arising out of its decisions, we do not favour the grant of such a general power. For the same reason, we recommend that the powers of enhancement under the other direct taxes Acts should be withdrawn.

4.20. The Income-tax Investigation Commission was also against the grant of a general power of enhancement to the Appellate Tribunal. It also did not consider it necessary to vest the Appellate Tribunal with power to vary, in favour of the Department, the order under appeal in respect of any item disallowed by the Appellate Assistant Commissioner even if the Department had not chosen to file an appeal against that order. However, it felt that instances might arise where the Department might not have chosen to appeal against some portion of the Appellate Assistant Commissioner's order so long as the assessee was prepared to acquiesce in the order as a whole. It suggested that in such cases, if ultimately the assessee did go in appeal, the Department should be permitted to file a memorandum of objections against so much of the order of the Appellate Assistant Commissioner as was against revenue, provided it was filed within 30 days of the service upon them of the notice, referred to in Rule 20 of the Appellate Tribunal Rules, of the appeal having been filed by the assessee. We endorse the views of the Income-tax Investigation Commission but we feel that a similar concession should be extended to the assesseees as well. We, therefore, recommend that both the Department and the assessee should have the right of filing a memorandum of cross objections before the Appellate Tribunal under the conditions mentioned above.

PANEL OF ADVISERS

4.21. As an improvement on the existing system, it was suggested to us that panels of non-official advisers should be constituted to help the appellate authorities in the discharge of their duties.

4.22. The association of non-officials with the tax department, in disposing of appeals, was considered in Japan by the Shoup Mission. It came to the conclusion that it was not a workable proposition. We feel that the observations made by it would apply with equal emphasis to conditions in India. It had stated as follows:

"Dissatisfaction with the present system has given rise to a number of proposals for citizens' Committees to settle disputes between the taxpayer and the official who made the reassessment. If there could be no expectation of improvement within the tax office, such committees would be useful. The problem is, however, that once such committees are set up, there is no longer much pressure for improvement of the protest mechanism within the tax offices. The committees would tend to perpetuate the very difficulties that brought them into existence. And no matter how carefully they were chosen, they could never do as good a job in this highly technical field of income taxation as could a well developed system of Conference Groups. Moreover, there is always the danger that the committees might get into the hands of persons who would try to use them for their own ends. We, therefore, recommend that citizens' committees be not introduced into the system of income tax administration."*

4.23. The Taxation Enquiry Commission had felt that participation of non-officials at the appellate stage had little chance of success in the circumstances prevailing in this country. The difficulty of getting sufficient number of persons adequately equipped for this purpose, especially in mofussil places and the fact that such persons would not be possessed of the expert knowledge necessary for dealing with tax assessments which are often of a complicated nature involving difficult points of law as well as of accountancy were mentioned by it as the reasons for coming to this conclusion.

4.24. The suggestion to associate non-officials at one stage or other in the process of administering a tax statute has always been attractive as a theoretical proposition. But there are many practical difficulties in working it out as the circumstances under which it could be put into effect are necessarily limited. We doubt whether a tax-payer would be willing to get his business affairs examined by persons who may be his competitors, either actual or potential. Moreover, even at present, the opinion of an expert in any field could be obtained by the appellate authorities by the issue of summons under Section 37(1) of the Income-tax Act and the corresponding sections of the other direct taxes Acts. The assessee and the Department could adduce such expert evidence as they desire and the evidence produced could be considered on merit by the appellate authorities. We are also doubtful whether participation by non-officials would aid in speedy disposal of appeals. It would be difficult for an outsider to grasp the intricacies of such a technical subject as a taxing statute and arrive speedily at a judgment superior in any respect to those given at present by officials who possess the advantage of a working knowledge of the statutes. In the appeals under the taxing statutes, normally, there are mixed questions of facts and law and it is, therefore, unlikely that association of non-officials would help to accelerate disposal of appeals in general. *In our opinion, no case exists for the association of non-officials with the appellate authorities.*

RIGHTS OF APPEAL

4.25. We now proceed to consider the modifications necessary in the existing rights of appeal under the different direct taxes Acts. The orders fixing liability on assessee or affecting their rights under the direct taxes Acts are, generally, all appealable. Instances where no specific appeals have been provided for are covered by the revisionary powers of Commissioners. Representations were made to us that on certain orders under the direct taxes Acts which affect the substantial rights of assessee no rights of appeal exist at present. Order under Section 35 of the Income-tax Act was mentioned as an example. The Income Tax Investigation Commission and the Taxation Enquiry Commission had recommended that an appeal should be provided against such an order. The latter recommended grant of appeal rights on certain other orders also.

4.26. In our opinion, there seems to be no reason why, for the purpose of seeking relief, the right of appeal should not exist as an alternate course in addition to the right to go in revision before the Commissioners in respect of all orders affecting the substantial rights of the assessee. *Therefore, we recommend that rights of appeal should be provided against the orders passed under the following Sections of the Income-tax Act and the corresponding sections of the other direct taxes Acts wherever applicable:*

- (1) Section 18(7) under which the person responsible for deducting tax at source and paying it to the credit of the Central Government could be treated as an assessee in default,
- (2) Sections 18A(6), 18A(7) and 18A(8) authorising levy of interest and Sections 18A(9) and 18A(10) authorising levy of penalty in instances of late payment or non-payment of the correct amount of advance tax,
- (3) Section 23(6) governing the determination of the income of a firm and its division amongst the partners,
- (4) Section 23A(1) authorising inclusion of deemed dividends in the total income of a shareholder,
- (5) Section 25(3) and 25(4) governing grant of exemption from tax in cases of succession and discontinuance of business,
- (6) Rule 6B under which registration, granted to a firm under Section 26A, could be cancelled,
- (7) Section 35 authorising rectification of mistakes in the orders passed,
- (8) Section 43 under which a person can be treated as agent of a non-resident, and
- (9) Section 44 under which liability could be fixed on partners of firms and members of associations in instances of dissolution or discontinuance of business.

In addition, appeal should also be statutorily provided against orders of an Appellate Assistant Commissioner under the different direct taxes Acts where he refuses to extend time for filing an appeal or dismisses an appeal as not filed in time.

4.27. In order to obviate multiplicity of appeal proceedings, it was suggested that the first appeal in respect of matters such as registration of a firm, partition of a Hindu undivided family, discontinuance of a business and questions regarding status and residence should lie directly to the Appellate Tribunal. We are sceptical about the usefulness of the suggestion. It would only result in an increase in the number of appeals before the Appellate Tribunal inasmuch as it rules out instances where decisions of Appellate Assistant Commissioners on such points might have been accepted as final by the appellants. It also amounts to denying opportunities to the assessee who do not have the means to agitate such points before the Appellate Tribunal. It appears to us that it would be difficult to work out the proposal in practice when in a case points in addition to those mentioned in it are involved and the assessee goes in appeal on all of them. In such circumstances, the same case might have to be dealt with by the Tribunal twice over *viz.*, once for dealing with the points brought before it directly and again for considering the other issues on which decision had been given by an Appellate Assistant Commissioner. Moreover, when the appeals are pending before the Tribunal on particular points it is doubtful whether an Appellate Assistant Commissioner would be willing to dispose of appeals before him on the other points. Again, it is likely to create confusion when two appellate authorities gave decisions on the same order but on different points and on different dates.

4.28. The Income-tax Investigation Commission had considered the question whether, compared to the appeals before Civil Courts, the present system of appeals under the Income-tax Act before two appellate authorities on questions of fact was not something of an unnecessary luxury. It came to the conclusion that Income-tax proceedings were somewhat different from the proceedings before the Civil Courts. It stated that in the Civil Courts the Judge was a person who was independent of the parties, whereas in the income-tax matters the assessing officer was a party and an investigator as well as a judge all rolled into one. It also felt that if in certain classes of cases, appeals are restricted to the Appellate Tribunal alone, it might result in an enormous increase in the volume of work of the Appellate Tribunal. Hence, it came to the conclusion that no modification in the appeal procedure was called for. *We find ourselves in agreement with the conclusions of the Income-tax Investigation Commission that no modification in the appellate procedure is called for.*

4.29. In order to reduce the work-load on appellate authorities a suggestion was made to us that the rights of appeal may be restricted on the basis of income or tax involved. Thus, it was suggested that in cases where disputed income was less than Rs. 5,000 or the assessed income was below Rs. 15,000 no appeal should lie to the Appellate Tribunal against the orders of Appellate Assistant Commissioners.

4.30. In our opinion, it would be unfair to deny the rights of appeal on the basis of any such monetary limits. Sometimes, appeals are preferred to test the propriety of the provisions of the taxing statutes and may have nothing to do with the quantum of income, expenditure, wealth, etc. involved in the assessment. Questions involving substantial points can arise in cases which may be on either side of the monetary limit fixed. Again, the proposal will adversely affect the rights of assessee in the small income group and we consider it unfair to deny them the rights which they enjoy now. What might appear as insignificant to an assessee

in the large income group might well be a matter of vital importance to an assessee in the small income group. Moreover, the latter category of assessee does not, in any case, figure to a large extent, at the second stage of appeal. Therefore, it is only fair not to deny them the chance for preferring an appeal before the Appellate Assistant Commissioners. There is also the possibility of a grievance being made out that if a restriction of the type suggested is brought into existence, the assessing officers might fix up assessment in lower income groups just below the monetary limit fixed merely with a view to depriving the assessee of their rights even in genuine cases. *In view of these considerations, we are of the opinion that no restrictions should be placed on the existing rights of appeal under the Income-tax Act on the basis of the monetary limit of the income or tax involved. We do not favour such a restriction being introduced under the other direct taxes Acts either.*

4.31. As a means of encouraging an early and prompt filing of returns, a larger degree of compliance with the terms of notices issued and for reducing the number of appeals, a suggestion was made to us that the right of appeal might be statutorily restricted in instances where a person failed to file his return or comply with the statutory notices issued to him. We doubt whether the present situation calls for such a drastic change. The possibilities of assessments being completed *ex parte* and penalties being levied in addition when returns are not filed or when the notices are not complied with, appear to act as sufficient deterrents. As there are instances where assessee are successful in their appeals against such *ex parte* orders and penalty orders, it seems to us that it would be unfair to shut out opportunities for appeal altogether. The non-compliance with the notices may be due to reasonable causes. The notices issued might have been invalid. There might have been no valid service of the notice. To deny a forum for decision in appeal in such cases seems to us unjust. Moreover, the suggestion assumes that every assessee is likely to go in appeal. Every assessee can certainly not be taken as an appellant—not even as a potential appellant. Hence this proposal may not encourage the filing of returns and compliance with notices to any greater extent than at present.

4.32. Prior to 1939, there was no appeal provided against an order passed under Section 23 (4) of the Income-tax Act and the only remedy against an *ex parte* assessment was what was provided by Section 27 under which the assessing officer could cancel such an assessment if sufficient cause for non-compliance was shown by an assessee. It was felt that for justice to be secured against such orders, they should be agitated in appeal before an officer other than the assessing officers and hence on the basis of a recommendation of the Income-tax Enquiry Committee, 1936, the Income-tax Act was amended allowing an appeal in such cases. *In our view, no change in the circumstances of a type demanding a going back to the pre-1939 position has occurred and hence we do not recommend any change in the present position in this regard.*

4.33. It was represented to us that the Department was faced with grave difficulties as a consequence of the granting of writs petitions jurisdiction under the Constitution over revenue matters to the High Courts and the Supreme Court. Prior to the Constitution, the Government of India Act, 1935 held the field and under it revenue matters were specifically excluded from the jurisdiction of the High Courts. We find that such a restriction on the judiciary had been in existence since the days of the Regulating Act, 1773. What started as a historical accident out of a dispute between Warren Hastings, the first

Governor-General of Fort William and Sir Elijah Impey, the first Chief Justice of the Supreme Court of Judicature was maintained as a cardinal principle in all acts of constitutional reforms ending with the Government of India Act, 1935. However, the entire position was changed by the Constitution of the Indian Republic. Article 225 of the Constitution continued to the existing High Courts the same jurisdiction and powers as they possessed immediately prior to the commencement of the Constitution and, in addition, granted original jurisdiction in revenue matters.

4.34. It was pointed out that the assesseees were challenging the validity of assessments as well as recovery proceedings through writ petitions. Generally, these petitions are not disposed of promptly and interim injunctions are granted staying the proceedings before the assessing and appellate authorities. When stay orders are issued by the High Courts and the Supreme Court in a particular case, these affect not only the impugned assessments and recovery proceedings but have wider repercussions inasmuch as similar proceedings in subsequent years in the same case as well as proceedings in other cases of like nature are also held up.

4.35. The real difficulty faced by the Department is the delay which generally occurs in the disposal of the petitions which may give opportunities to the assesseees for alienating their assets or destroying evidence rendering the efforts of the Department nugatory. The problem was considered in all its aspects by the Law Commission which did not favour the abandoning of the present position and thought that the remedy lay in expediting writ petitions governing revenue matters by giving them precedence in the list of Article 226 cases posted for hearing. It suggested that a general rule should be made by the High Courts for giving such precedence.

4.36. The difficulty experienced by the Department is but one facet of a many faced and more fundamental problem which is inherent in any system of government based on parliamentary democracy—the problem of checks and balances between the three governmental functions—viz., legislative, executive and the judicial. If the revenue department is to be helped out of its present difficulties by amending the Constitution, it will be difficult to resist request from the other departments. While it cannot be denied that revenue is put to considerable inconvenience and loss by frequent resort to Articles 136 and 226 of the Constitution by assesseees, the fact that there are also instances where the judiciary gave decisions in favour of assesseees have their own significance. Instances are not lacking even now, where the High Courts have been disposing of petitions with observations which are bound to nurture the growth of sound constitutional principles. The courts have also, on several occasions, insisted on the petitioners furnishing sufficient security while granting interim injunctions. The rights conferred by Articles 136 and 226 are also available for the executive. *While we appreciate the difficulty of the Department in this matter we feel that what is required is not a whittling down of the rights under the Constitution but means to ensure a proper use of such rights.* Speedy disposal of the petitions and insistence by Courts on the petitioners furnishing securities for the tax or giving undertakings which would protect the interest of revenue as a condition for admitting the petitions would go a long way in this matter. *We, therefore, recommend that it should be ensured through appropriate Rules of the High Courts that the Courts give precedence in the matter of hearing of all applications concerning assessment and collection of the direct taxes, issue notices of hearing to the Department at the stage of admission of writ petitions, and insist, in suitable cases, on the petitioners furnishing adequate securities to cover taxes in dispute before granting stay orders.*

DISPOSAL OF APPEALS

4.37. A criticism levelled against the manner in which the appellate authorities have been functioning was the delay in disposal of appeals. The importance of speedy dispensation of justice cannot be over emphasised and for justice to be really effective it is essential that it should be rendered in good time. Therefore, proper measures are necessary to ensure expeditious disposal of appeals. One of the suggestions made for expediting appellate decisions was that a time limit should be fixed statutorily for the hearing and disposal of appeals. We do not consider this a feasible proposition. No such time limit exists with regard to other pieces of legislation and it is difficult to differentiate appeals under the taxing statutes from those under the other laws. Moreover, looking to the volume of work on hand and especially the number of appeals which are being carried forward as arrears year after year, we are doubtful whether it would be possible to secure their disposal within any reasonable time limit that may be fixed. Again if the time limit is to be fixed statutorily, the quality of the orders passed would be affected adversely, as the aim would be to see that no appeals remain undisposed of at the end of a statutory period. There will also arise the practical difficulty as to what should happen to appeals which do not get disposed of by the time limit fixed. We found that the assesseees were not willing to accept the proposal that in instances where appeals could not be disposed of within the time fixed statutorily such appeals should go automatically to the next stage in appeal. In our opinion, it should be possible to secure speedy disposal of appeals through administrative measures. *In view of these considerations, we do not favour the fixation of any statutory time limit in this regard.*

4.38. It was represented to us that delays occurred at every stage of appeal. We take up now for consideration the trends regarding disposal of appeals at the different appellate stages and suggest measures for improving the present position with regard to each of them.

The following table shows the progress of disposal of appeals by the Appellate Assistant Commissioners during the period 1954-55 to 1958-59:

Table 1: *Progress of disposal of appeals by Appellate Assistant Commissioners.*

Years	1954-55	1955-56	1956-57	1957-58	1958-59
1. No. of appeals instituted	91,458	93,326	99,820	1,04,069	1,19,198
2. No. of cases for disposal	1,72,752	1,93,096	2,14,735	2,13,706	2,02,428
3. No. of cases disposed of	70,982	78,181	1,05,098	1,30,476	1,19,514
4. Balance	99,770	1,14,915	1,09,637	83,230	82,914
5. No. of A. A. Cs at work	65	65	90	90	83
6. Average disposal	1.092	1.203	1.167	1.449	1.440

The table shows that though the number of appeals instituted during the period was continuously on the increase, the number of cases for disposal

during each of the years registered a decline during 1957-58 and 1958-59. The total number of cases disposed of also showed an improvement throughout the period except during 1958-59. The arrears, however, continued to be substantial and for certain years, they were more than the number of cases instituted. The break up of arrears on 31st March 1959 showed that nearly 80 per cent of the total were covered by appeals pending for less than one year. Though cases pending for more than one year formed only 20 per cent of the total appeals pending as on that date, they amounted to 17,274 which is an unduly large number. Every effort should be made to dispose of these cases early and reduce the pendency of old arrears.

4.39. *We have reviewed the measures adopted by the Central Board of Revenue for reducing the pendency of appeals before the Appellate Assistant Commissioners and we find that they have proved fruitful. Since April 1956, the Central Board of Revenue had been insisting that the Appellate Assistant Commissioners should dispose of appeals according to a planned programme. These programmes are scrutinised by the Central Board of Revenue which suggests such modifications as it considers necessary. Through a system of review of the disposal every month it ensures that the programme is by and large adhered to. The planned programme and the monthly reviews have helped considerably in increasing the pace of disposal. Still, we find that the pendency at the end of 1958-59 represents eight months' workload. We feel that the matter should continue to be kept under constant review and the pendency should be brought down to some four months' workload. While every effort should be made to increase the rate of disposals, the improvement in output should not be secured at the cost of quality of work. If the present strength of the Appellate Assistant Commissioners is considered inadequate for these purposes, there should be no hesitation in increasing it. It may be re-emphasised in this context that the really effective remedy in reducing appeals is the passing of realistic assessment orders. We feel that the recommendations we have made with regard to assessment of the tax-payers in the small income group, the extension of "group charges" as well as the other improvements we have suggested in the Chapter on Assessments would make for a decline in the number of appeals instituted.*

4.40. Details regarding disposal of appeals by the Appellate Tribunal will be clear from the following table:

Table 2: *Progress of disposal of appeals by the Appellate Tribunal.*

Years	1954-55	1955-56	1956-57	1957-58	1958-59
1. No. of appeals instituted	7,858	8,777	9,621	13,140	13,327
2. No. of cases for disposal	14,486	16,054	17,224	22,629	26,851
3. No. of cases disposed of	7,209	8,451	7,735	9,105	9,733
4. No. of cases pending	7,277	7,603	9,489	13,524	17,118

The above statistics show that the number of cases for disposal registered a continuous increase throughout the period of five years under consideration. The number of cases disposed of during the years fluctuated either way during period but in 1957-58 and 1958-59 there was substantial

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improvement. The number of cases in arrears also registered a continuous increase. In fact, the number of appeals pending in 1958-59 was much more than two times the number for the year 1953-54 when it stood at 6628. As in the case of appeals before the Appellate Assistant Commissioners, for certain years, the arrears were larger than the number of appeals instituted. We are convinced that with its present strength, the Appellate Tribunal will not be able to cope up with the work on hand. *We recommend that the number of benches of the Appellate Tribunal should be increased immediately.* Steps should be taken to see that cases do not remain pending merely because of vacancies or absence of members. The President of the Tribunal should exercise administrative control for ensuring that all the benches dispose of a sufficiently large number of appeals.

4.41. The details regarding the rate of disposal of appeals before the High Courts would be clear from the following table:

Table 3. *Progress of disposal of references by High Courts.*

Years	1954-55	1955-56	1956-57	1957-58	1958-59
1. No. of references instituted	369	368	434	436	521
2. No. of cases for disposal	1,553	1,649	1,751	1,923	2,174
3. No. of cases disposed of	272	332	264	270	285
4. No. of cases pending disposal	1,281	1,317	14,87	1,653	1,889

It could be seen from the above that the total number of cases for disposal registered a continuous increase throughout the period. While the number of cases disposed of fluctuated either way, arrears have been continuously on the increase. In each of these years, the number of cases pending at the end of the year was much more than the number of references instituted. Out of the total number of cases pending on 31st March 1959, more than 50 per cent consisted of cases pending for more than two years. The present position needs to be improved. *We suggest that the Chief Justices of the various High Courts should be requested to examine the position and take suitable measures such as the constituting of Special Benches for dealing with reference applications under direct taxes and giving priority to them so that the disposal of such cases is expedited.*

4.42. The following table shows the position regarding appeals before the Supreme Court:

Table 4: *Progress of disposal of appeals by Supreme Court.*

Years	1954-55	1955-56	1956-57	1957-58	1958-59
1. No. of appeals instituted	34	58	89	46	30
2. No. of cases for disposal	83	123	202	216	234
3. No. of cases disposed of	18	10	32		50
4. No. of cases pending disposal	65	113	170	204	184

The above figures show that there has been a steady increase in the number of appeals for disposal. The disposal during 1958-59 was the highest

during the period under consideration. Here also, the pendency was more than the number of appeals instituted during an year. *For expediting disposal of appeals pending before the Supreme Court, we suggest that the Chief Justice may be approached with a request for constituting a special direct taxes bench to deal with these appeals.*

UNIFORMITY IN INTERPRETATIONS

4.43. It was represented to us that apart from delays in disposal, a great deal of hardship was, caused to the taxpayers on account of the lack of uniformity in the interpretations put on the various provisions of the taxing statutes by the assessing and appellate authorities. It was pointed out that where a particular provision was capable of more than one interpretation or where different appellate authorities had pronounced different judgments, Revenue invariably chose to adopt the interpretation most favourable to it and this gave rise to further litigation and delays.

4.44. While we appreciate the difficulties resulting from the different interpretations of the provisions of a statute by different authorities, we feel that these cannot be completely avoided. Varying interpretations is not a feature peculiar to taxing statutes alone, but common to almost all the statutes. If, to obtain a greater degree of uniformity in interpretation, the taxing statutes are to be expressed in such terms as not to leave any doubt as to the correct interpretation and, for this purpose, a more detailed elaboration of the provisions is to be attempted, the statutes would become cumbersome. Further, in the absence of an interpretation which is legally binding on all, the freedom of the appellate authorities to interpret the provisions according to their best understanding cannot be curtailed in any manner. In order to secure uniformity in the interpretation at the assessment stage to as large an extent as possible, the Central Board of Revenue issues suitable instructions to the assessing officers, whenever it observes that a provision is capable of varying interpretations, and whenever a new law is enacted or some amendments made to the existing provisions of the law. Such instructions, in our opinion, considerably mitigate the difficulties of the assessee, and the Central Board of Revenue should continue to issue such instructions, wherever necessary. We suggest that these instructions should be published and made freely available to the members of the public. Guidance by senior officers at the pre-assessment stage, extension of the 'Group Assistant Commissioners' charges and the various other suggestions made in the Report will also, we believe, go a long way in securing greater uniformity at the assessment stage.

4.45. *As regards uniformity of interpretation at the stage of appeal before the Appellate Assistant Commissioners the present procedure of issuing copies of the instructions of the Central Board of Revenue to them should continue. These, however, will not be binding on them. As regards the Appellate Tribunal we suggest that where on a question of law involved in an appeal before it varying judgments have been given by different High Courts, the President of the Tribunal may, on a request made to him, refer the question directly to the Supreme Court for a decision.*

ADDUCING OF EVIDENCE

4-46. The difficulties experienced both by the Department and the taxpayers regarding the adducing of evidence before the appellate authorities were brought to our notice. At present, evidence which was not produced before the assessing officers could be admitted in the appeal at the discretion of the Appellate Assistant Commissioner. In an appeal before the Appellate Tribunal, the assessee has no right to produce additional evidence, either oral or documentary. It was pointed out that there were many instances where assessee failed to produce all the evidence relied upon by them in support of their contentions and courted assessments on an estimate basis hoping that the liability arising from such estimates would fall below their true liability. If they failed in their attempt, they preferred to adduce evidence withheld by them at the assessment stage before the appellate authorities and seek relief. In order to check such attempts at escapement of true liability and also for bringing about a reduction in the number of appeals, it was suggested to us that, statutorily, it should be provided that no opportunity should be given to assessee to adduce evidence at the appellate stage if they had failed to produce it without sufficient cause at the assessment stage.

4-47. This question had been considered by the Income-tax Investigation Commission. It was of the opinion that in appeals before the Appellate Assistant Commissioners if the assessee had been given opportunity and were in a position to produce relevant evidence but had wilfully withheld it from the Income-tax Officers such assessee should not be allowed to lead any evidence for the first time before the appellate authority. It also pointed out that to enable the appellate authorities to decide whether evidence was wilfully withheld or not, the assessing officers should take care to ensure that the order sheets showed clearly the number of opportunities given to assessee to adduce evidence and also the points on which evidence had been required. It suggested that such a result might be obtained by means of a statutory rule.

4-48. While we have no sympathy with the assessee who keep back evidence relevant for proper assessment in the hope that the estimates made on them might fall below their true liability, we feel that there could be instances where the assessee were prevented by sufficient cause from adducing the evidence before the assessment authorities. It was pointed out to us that many a time the assessing officers failed to make their mind clear and mention their requirements to the assessee and that, often, orders were passed which took the latter by surprise. *On a careful consideration of the matter, we recommend continuance of the present system where the adducing of additional evidence is left to the discretion of the Appellate Assistant Commissioner.* The Appellate Assistant Commissioners should, however, entertain new evidence only where the assessee had no opportunities for producing it before the assessing authorities. They should not allow the assessee to adduce any evidence which they had deliberately withheld at the assessment stage. *As regards the adducing of evidence before the Appellate Tribunal, we do not think any modifications are necessary and the position should continue to be governed by Rule 29 of the Appellate Tribunal Rules as at present.*

COLLECTION OF TAXES IN DISPUTE

4.49. It was represented to us that hardship was caused to assesseees when the Department insisted on the payment of tax even though they might have preferred appeals against the assessments. It was suggested that statutorily, collection of tax should be stayed in all instances where assessments were disputed in appeal, revision or review. The problem assumes importance because of the grievance made out that there were many instances where unreasonable demands were made and that in such cases if collections were insisted upon before the decision of the appellate authorities, the assesseees were likely to be ruined.

4.50. At present, the direct taxes Acts do not contain any provision for an automatic stay of collection when assesseees go in appeal. The provisions of Section 45 of the Income-tax Act, however, mention that where an assessee has presented an appeal before the Appellate Assistant Commissioner, the Income-tax Officer may, in his discretion, treat the assessee as not being in default as long as such an appeal is not disposed of. Similar provision exists in the other Acts also. The discretionary power is thus available only to the assessing officer and the only instance where he can allow time for payment of tax is where the assessee has gone in appeal before the Appellate Assistant Commissioner. If the matter is before the Tribunal or even before the High Court or is before the Commissioner of Income-tax, the assessing officer has no authority to use his discretion. The refusal by an assessing officer to use his discretionary power in favour of the assessee cannot be appealed against.

4.51. The Income-tax Investigation Commission had recommended that a specific provision should be made in the Income-tax Act enabling the appellate authority to order stay of recovery of tax pending disposal of appeals. It had suggested that in suitable cases the appellate authorities might call upon the assesseees to furnish securities for the amount covered by the stay order, and that the assessee should pay interest at three per cent, if the amount stayed was subsequently ordered to be recovered pursuant to the decision in appeal.

4.52. We agree that considerable hardship would result if assessments are made without any reasonable basis and the Department insisted on collecting the duties without waiting for decisions in appeal. There could also arise honest differences of opinion between the Department and the assesseees with regard to the applicability of particular provisions of the taxing statute. In such circumstances, we feel that the assesseees should be provided with some convenience in the matter of payment of the tax and collection of disputed amount should be held over till the decision in appeal. However, we do not favour any statutory provisions being made for the stay of collections as obtaining in U.K. and U.S.A. In our opinion, the circumstances prevailing in this country are different and the introduction of such a system would only result in putting a premium on defaults in payment of taxes. We are not in favour of the suggestion made in this regard by the Income-tax Investigation Commission, either. We feel that it would lead to the filing of frivolous appeals merely with a view to obtaining time for payment of tax. Moreover, it would also result in a duplication of the work of appellate authorities inasmuch as a case will have to be heard by the appellate authority twice—once for taking a decision on the request made for stay of collection and a second time for deciding the appeal on merits of the questions raised. Statistics show

that considerable amounts are being held in abeyance even now by Income-tax Officers in cases where the assessee has gone in appeal. Such amounts increased from 16·61 crores of rupees in 1953-54 to 30·27 crores in 1958-59. Judged by the figures, it would appear that the discretionary power is already being used judiciously. While the assessee may be given due accommodation in the matter, we desire that the powers regarding it should be exercised by the administrative authorities and with sufficient safeguards to protect the interests of revenue. We, therefore, recommend that the present provision for the stay of disputed demands at the discretion of the assessing officer should continue but the assessee should be provided with a right to approach the Inspecting Assistant Commissioner, the Commissioner and the Central Board of Revenue in instances where his request is not acceded to. These authorities should normally grant time in deserving cases where an assessee agrees to furnish securities. In addition, interest at six per cent. should be charged on the amount of taxes stayed but ultimately held payable on decisions in appeal. The Commissioner should, however, have the discretion to waive security in suitable cases. We also recommend that the present practice of accommodating assessee in the matter of payment of taxes even in instances where no appeals have been preferred should continue subject to the conditions already mentioned by us.

4.53. Another phase of the same problem was raised before us by the Department and it was suggested that, statutorily, it should be empowered to withhold refunds resulting from decisions of Appellate Assistant Commissioners and the Appellate Tribunal. Under Section 66(7) of the Income-tax Act and the corresponding Sections of the other direct taxes Acts, High Court is granted power to authorise the Commissioners to postpone payment of the refund which became due as a result of its decision until the disposal of the appeal by the Department to the Supreme Court. Except for these, there is no provision to safeguard the interests of revenue when as a result of an order of an appellate authority a refund of tax has been made. If, subsequently the Department succeeded in appeal, it might experience difficulties in getting back the amounts as by that time the assessee might have alienated his assets or failed in his business or even ceased to exist.

4.54. The Income-tax Investigation Commission had favoured the placing of a restriction under the Income-tax Act on issue of refunds resulting from orders in addition to what already obtained under Section 66(7) of the Act. It suggested that when an appeal was filed or reference was made, the Department should file an application to the Appellate Tribunal or the High Court, as the case may be, stating the reasons why in its opinion it would be inexpedient in the interests of revenue to allow refund being made under the order complained of. It suggested that on the analogy of Order 41 of Rules 5 and 6 of the Code of Civil Procedure, the Appellate Tribunal or the High Court should order either stay of issue of refunds or permit its issue on the assessee's furnishing sufficient security. It also suggested that if the whole or the part of the refund thus withheld was ultimately held payable to the assessee on final appeal, the assessee should be granted the refund along with interest at three per cent.

4.55. The provisions of Section 66(7) were introduced as a result of the recommendation made by the Income-tax Enquiry Committee, 1936. The justification for such a procedure was that there was enormous delay in the disposal of appeals to the Privy Council on orders from the High Courts. In view of our recommendations with regard to the mode of

working of the various appellate authorities, we are confident that there would not be any undue delays. In our view, it would be unjust to withhold amounts due to an assessee merely because the Department had gone or desired to go in further appeals. The various measures suggested by us should, cumulatively, prove helpful in protecting the interests of revenue and we do not think that there is any case for placing a restriction on issue of refund arising from decisions of appellate authorities. We, therefore, do not favour the introduction of provisions analogous to what is contained in Section 66(7) of the Income-tax Act and the corresponding Sections of the other direct taxes Acts to cover instances of appeals before the other authorities. On the other hand, we are sufficiently impressed with the grievances brought out by the assesseees that there is an enormous delay in the issue of refunds resulting from appellate orders. As a means of remedying the situation, we are recommending later, in the Chapter on Refunds, that in respect of all refunds arising out of appellate orders, interest at six per cent. should be paid if delayed beyond one month from the date on which the appellate order reached the assessing officer.

COSTS IN TAX APPEALS

4.56. It was represented to us that the direct taxes Acts should be amended to provide for the awarding of costs to successful parties in appeal proceedings before the Appellate Assistant Commissioners and the Appellate Tribunal. Excepting Section 66(6) of the Income-tax Act and the corresponding Sections of the other direct taxes Acts which provide that where a reference is made to the High Court, costs shall be awarded at its discretion, no statutory provision exists for the awarding of costs in tax appeals. The rationale behind the scheme of awarding costs is that the party who has been put to expenses unnecessarily in the course of determination of correct tax liability gets his costs reimbursed to the extent held admissible. While the suggestion has obvious merits, we doubt whether it can be introduced at the stage of appeal before the Appellate Assistant Commissioners or the Appellate Tribunal because such a procedure would give rise to a number of problems. The decisions by these authorities may be reversed partly or fully in a subsequent appeal. The problem would arise whether the costs awarded should be taken back and if so, to what extent. There would also arise the need for a certifying authority, as obviously whatever the assessee might have chosen to spend could not be awarded as costs. Quite often, a number of points are taken up when a case goes in appeal and only some of them get allowed in appeal without the tax or penalty being remitted in full. In such circumstances the question would arise whether the appeal which was partly decided in favour of the appellant was to be judged as sufficiently successful to qualify for costs. We find that the Royal Commission on the Taxation of Profits and Income had, for similar reasons, not favoured the award of costs before the General or Special Commissioners. For these reasons, we are of the view that the practice of awarding costs prevalent in Civil Courts cannot be easily adopted for appeal proceedings under the direct taxes Acts as far as appeals before the Appellate Assistant Commissioners and Appellate Tribunal are concerned. The system of awarding costs to successful parties is already in existence so far as references to High Courts and appeals to Supreme Court are concerned, and, therefore, no change is required.

4.57. Closely allied to this problem is the question of allowance of the costs incurred in appeal as a deduction from the taxable income of an assessee. We have already commented on the suggestion with regard to deduction of expenses at the assessment stage for the determination of tax liability under the Income-tax Act. The present procedure of allowing

expenses incurred in the settling of the income-tax liability of the assessee before the assessing authorities itself constitutes an extra statutory concession. We have earlier recommended an extension of this concession to cover costs incurred in the settlement of liabilities at the assessment stage under the Income-tax Act under all the heads of income as well as for determining liability under the other direct taxes Acts. *In our view, there is no justification for a further extension of the concession to cover costs incurred in appeal and we do not, therefore, recommend any change in that direction.*

REPRESENTATION OF THE DEPARTMENT BEFORE APPELLATE AUTHORITIES

4.58. A problem to which our attention was specifically drawn was the inadequacy in the present system of representing the Department before the Tribunal, the High Courts and the Supreme Court. It was pointed out that many a time the Department lost its case merely on account of the ineffective defence put up. *We are convinced that there is a need for improving the present state of affairs.* In the Chapter on Administration, we are recommending the appointment of a senior member of the legal profession adequately experienced in tax matters as a legal adviser of the Central Board of Revenue. It should be his responsibility to see that the representation of the Department before the Tribunal, the High Courts and the Supreme Court is adequate. In our opinion, the Central Board of Revenue should decide the matter of engaging counsels on its own and should engage leading counsels to represent it in important cases before the Appellate Tribunal and other courts of appeal. By such a procedure, it will be able to safeguard the revenues involved not only in those cases but also in other similar cases. We suggest that special wings consisting of legal and accountancy advisers should be constituted at selected centres like Bombay, Calcutta, Madras etc. Their services may be utilised for a proper defence of the cases of the Department. *We recommend that the senior Departmental Representative before the Appellate Tribunal should invariably be an officer of the status of an Assistant Commissioner.* He should be helped in his work by competent junior representatives. Selection for these posts should be made solely on the basis of merit and only officers with aptitude for advocacy should be selected for the purpose. They should be selected at a very early stage of their official career and given special training in this line of work. They should also be granted special pay and specialisation in this field of work should be encouraged. The Income-tax Officers should, as far as possible, be present with records at the time of the hearing of appeals before the Appellate Tribunal, High Courts and the Supreme Court. This would serve as an aid to the departmental representatives and the counsels while conducting the cases and also help in developing a judicial approach amongst the officers.

REVISIONARY POWERS OF COMMISSIONERS

4.59. Representations were made to us that the present provisions relating to the revisionary powers of Commissioners need to be modified in certain respects. It was suggested that for securing uniformity in the provisions of direct taxes Acts as regards the time limit under which revision in favour of assessee as well as revision in favour of revenue can be effected, the time limit under Section 33A of the Income-tax Act and the corresponding sections in the other direct taxes Acts should be increased from one year to two years. Even now, though under Section 33A, the time limit of one year is fixed, the Commissioners are granted the discretionary power to condone delays in deserving cases and, therefore, in

effect, the period of time might be even more than the two years prescribed under Section 33B. Hence we do not think that any change is called for in this respect. We desire to mention in this context that the Commissioners should condone delays freely, especially in cases of over-assessments, and the assessee should not be denied benefit merely on account of the revision petitions having been filed beyond the period of limitation. We would also like to see uniformity in the various direct taxes Acts as regards the other conditions governing the revision powers both in favour of the assessee as well as Revenue.

4.60. With regard to Section 33A(2) of the Income-tax Act and the corresponding Sections in the other Acts, another suggestion made to us was that the Commissioners should invariably grant a hearing to the petitioners before disposing of the petitions. In our view, a distinction has to be made in this matter between simple cases where the points involved would be sufficiently clear from the evidence on record and the more complicated cases where granting of personal hearing would be of advantage. We recommend that while in instances where the assessee does not require a hearing the revision fee may continue to be Rs. 25/- as at present, in instances where the assessee desires a hearing by the Commissioner, he should pay a fee of Rs. 75/-. The Commissioner should not, however, be precluded from granting a hearing to the assessee in cases of the former category if, for any reason, he considers it necessary.

4.61. The delay in disposal of petitions filed before the Commissioners under Section 33A(2) of the Income-tax Act was also brought to our notice. The following table shows the disposal of these petitions during the years 1954-55 to 1958-59:—

Table 5. Progress of disposal of revision petitions under Section 33A of the Income-tax Act.

	1954-55	1955-56	1956-57	1957-58	1958-59
1. No. instituted	5,283	5,017	4,907	6,284	4,927
2. No. for disposal	9,819	9,643	9,247	10,611	9,791
3. No. disposed of	5,193	5,303	4,920	5,747	3,493
4. Balance	4,626	4,340	4,327	4,864	6,298
5. No. of Commissioners	17	17	17	18	18
6. Average disposal	305	312	289	319	194

It would be observed that the number of petitions disposed of during any year has been more or less equal to the number filed during the year till 1956-57 and that thereafter disposal has been much less than the fresh institutions. The result has been that the number of petitions remaining undisposed of year after year has increased and at the end of 1958-59 it was more than the fresh institution. In our view it is necessary not only to ensure that the pending petitions are disposed of immediately but also that the tendency towards an increase in their number is arrested. Special efforts are therefore, necessary to see that these petitions are disposed of more expeditiously.

CHAPTER 5

COLLECTION AND RECOVERY

INTRODUCTORY

The success of any tax administration is to be judged not merely by the methods it adopts for fair and judicious determination of tax liability but also by the manner in which the State secures to its tills sums determined as its dues. The interests of both the State and citizens are served best when taxes are collected promptly and without causing undue hardship to assesseees. In this Chapter we shall examine the existing system of collection and recovery of tax and consider what modifications are necessary for achieving the above objectives.

PROBLEM OF ARREARS

5.2. A continuous increase in the amount of revenue remaining in arrears has been a disquieting feature of Income-tax administration in India for a large number of years. Apart from the adverse effect it has on the morale of both the Administration and the taxpayers, the continued existence of large sums of taxes in arrears has serious unhappy economic significance. Heavy arrears interfere with the distribution of the tax burden between the various taxpayers intended by the legislature and the honest taxpayers are made to shoulder a heavier burden. Once they are allowed to come into being, arrears have a tendency to become chronic. The high degree of concern and promptitude with which generally, the businessmen tend to meet their commercial obligations on account of their desire to build up and maintain reputation, goodwill and credit in the market, seem to be lacking, unfortunately, when it comes to meeting their financial obligations to the State. In our view, the business ethics should not remain confined to their commercial dealings alone but should extend to the field of civic existence as well. Every citizen must be prompt and punctual with regard to meeting all his obligations to the State, and the Administration should take effective and timely measures to collect its legitimate revenues.

5.3. The following table gives the position of arrears of income-tax during the period 1954-55 to 1958-59:

TABLE 1 *Analysis of total arrears according to 'age' of the demand*

Year	Demand raised during the year	Arrears out of demands raised during the year	Arrears out of demands raised during the preceding year	Arrears out of demands raised during earlier years	Total arrears
1	2	3	4	5	6
1954-55	160·86	57·93 (28·22)	36·74 (17·90)	110·63 (53·88)	205·30
1955-56	177·94	74·60 (32·49)	31·85 (13·88)	123·13 (53·63)	229·58
1956-57	205·67	85·17 (32·50)	40·75 (15·55)	136·12 (51·95)	262·04
1957-58	203·84	93·98 (33·41)	44·79 (15·92)	142·51 (50·67)	281·28
1958-59	231·25	81·01 (29·83)	35·65 (13·13)	154·94 (57·04)	271·60

(Amounts are in crores of rupees. Figures in brackets represent percentage formed of total arrears)

The above figures show that there has been a steady increase in the total amount of arrears throughout the first four years of the period under study. However, it is encouraging to note that during 1958-59 the position has improved and the Department has been able to stem the tendency for arrears to increase and even reduce the outstandings. The figures also disclose that in each of the five years, more than 50 per cent of the arrears were outstanding for two years and over. Such arrears appearing in column No. 5 have exhibited a continuous increase throughout the period though, expressed as a percentage of total arrears, they registered a decline since 1955-56 except for 1958-59 when they increased both in amount and in terms of percentage. The table also shows that in each of these years the arrears out of the demands raised during the year itself are considerable. The figures in column 3 show that arrears out of current demand represented, on an average, nearly 31 per cent of the total. On further analysis, we have ascertained that the sums include amounts which had not become due for collection by 31st March, in each of these years but even when allowance is made for such amounts, arrears relating to current demands are quite considerable. While the difficulties in effecting collections out of old arrears is understandable, the appearance of large sums out of current demands themselves as arrears is quite disturbing.

5.4. The total amount of arrears as disclosed by the statement discussed in the preceding paragraphs appears to be substantial. However, when we take into account the amounts which are likely to be cancelled and those which may prove to be irrecoverable, the amount of collectible arrears are very much less.

The following table gives a break-up of the total arrears during the period 1954-55 to 1958-59:

TABLE 2—*Analysis of arrears under certain broad heads*

	1954-55	1955-56	1956-57	1957-58	1958-59
1. Amount pending settlement of double incometax and other relief claims.	19.37 (9.43)	19.07 (8.30)	16.88 (6.44)	13.94 (4.96)	11.09 (4.08)
2. Amount due from persons who have left India and have no assets in India	10.18 (4.96)	10.96 (4.77)	7.26 (2.77)	7.76 (2.76)	8.07 (2.97)
3. Amount probably irrecoverable	7.50 (3.65)	5.27 (2.30)	6.95 (2.65)	11.33 (4.03)	8.3 (3.07)
4. Amount due from companies in liquidation	4.69 (2.29)	4.98 (2.17)	5.91 (2.25)	6.63 (2.36)	7.18 (2.64)
5. Amounts which have not fallen due before 31st March	32.92 (16.04)	46.72 (20.36)	52.37 (20.00)	52.66 (18.72)	41.50 (15.28)
6. Amounts covered by certificates issued u/s 46(2).	80.59 (39.25)	84.21 (36.68)	104.40 (39.84)	114.01 (40.53)	120.01 (44.19)
7. Amounts kept pending disposal of appeals	20.04 (9.76)	21.90 (9.54)	25.25 (9.63)	27.49 (9.77)	30.27 (11.15)

	1954-55	1955-56	1956-57	1957-58	1958-59
8. Amount in respect of which penalty under Section 46(1) has been levied.	3.36 (1.64)	3.91 (1.70)	3.36 (1.28)	3.66 (1.30)	1.81 (0.67)
9. Amount fallen due before 31st March for which no action for recovery was taken	26.65 (12.98)	32.55 (14.18)	39.67 (15.14)	43.81 (15.57)	43.33 (15.95)
10. Total arrears.	205.31	229.58	262.04	281.28	271.60

[The amounts are in crores of rupees. The figures in brackets represent percentages formed of total arrears]

5.5. In the above statement, arrears under item 1 representing amounts pending settlement of double income-tax and other relief claims appear to be substantial. During these five years, as a result of the efforts of the Department such arrears have exhibited a steady downward trend both as regards their quantum and the percentage they formed of total arrears. Though the amounts do not constitute any locking up of the Governmental funds as such, their presence aids only to give a misleading picture of the true position and hence it is but proper that this category of arrears gets liquidated soon by disposing of the pending claims expeditiously. Our views on this problem are contained in the Chapter on Refunds.

5.6. As regards arrears under item 2, representing amounts due from persons who have left India leaving no assets behind, the chances of recovery are remote and the sums do not represent any collectible demand. We were given to understand that a major portion of these amounts is represented by sums due from persons who have left for Pakistan. We are of the opinion that the problem needs to be dealt with at the political level at an early date and these sums could perhaps be included as part of the claim which India should prefer against Pakistan. As regards the rest, they should be written off expeditiously.

5.7. Arrears under item 3 represent demands made on assesseees who admittedly earned substantial amounts of income but by the time assessments were framed, they had neither any income nor assets left with them from which the taxes levied could be recovered. The chances of their recovery now are ascertained to be very meagre. Writing off the non-collectible portion and resort to a system of scaling down of demands according to the paying capacity of the assesseees are called for with respect to these arrears. We have given our suggestions in this regard in paras 5.16 to 5.21 of this Chapter.

5.8. The amounts due from companies in liquidation appearing under item 4 also constitute a sum which does not, in the main, represent any collectible demand. It was brought to our notice that in many instances companies were taken into liquidation with the set purpose of thwarting attempts at collection of tax by the Department. We consider the problem to be a serious one. Our suggestions to resolve the difficulties of the Department are contained in paras 5.57 to 5.70 of this Chapter.

5.9. The amounts under item 5 represent sums which had not fallen due before the 31st March of the corresponding year, and cannot be taken as real arrears and most of them would have been collected during the subsequent years. However, the appearance of these sums at such high figures is clearly indicative of delay in the completion of assessments. No doubt, they also include demands in cases completed during the earlier part of the year but in respect of which instalments had been granted for payment of tax. All the same, the bulk of the demand included in them must have resulted from assessments completed nearabout the end of the year. This brings out in bold relief, the defect existing at present in the planning of assessment work. It proves the truth in the grievance made out before us that in large revenue yielding cases involving contentious points assessments are kept back and completed only at the fag end of the year. This is highly objectionable and needs to be remedied by a proper planning of assessment work. We have analysed and stated our views on this aspect of the problem in the Chapter on Assessment but we are repeating it here only to stress the point that delayed assessments have a direct bearing on the problem of arrears obtaining in this country.

5.10. Thus, out of the total amounts of the arrears appear in Table 2, *the amounts represented by items 1 to 5 cannot really be considered as effective arrears. These include demands which are either clearly irrecoverable and should have been written off long ago, as also sums which had not fallen due for collection during the respective years. Therefore, in our view, the amount of Rs. 271.60 crores shown as arrears of Income-tax for the year ending 31st March 1959 is an unrealistic figure.*

5.11. The effective arrears are locked up in the remaining four categories shown in Table 2. The total of these stood at Rs. 130.64, Rs. 142.57, Rs. 172.68, Rs. 188.97 and Rs. 195.42 crores during 1954-55, 1955-56, 1956-57, 1957-58 and 1958-59 respectively and included the accumulations of arrears of many years.

5.12. Out of this amount, demands covered by certificates issued under Section 46(2) of the Income-tax Act appearing as item 6 represent the real crux of the problem of arrears. There has been a continuous increase in this category of arrears throughout the years under consideration. After a detailed study, we have come to the conclusion that the system of effecting collection of central taxes through the agency of State officials by issue of certificates under Section 46(2) has not proved very effective. In view of the country's development plans it is of utmost importance that collection of tax is made expeditiously and recovery provisions strictly enforced and for this purpose we have, later in this Chapter, examined the feasibility of effecting recoveries through a Central Government agency.

5.13. Arrears under item 7 represent demands kept pending collection on account of appeals. These amounts also appear to be considerable. We have already analysed the various aspects of this problem and stated our views in the Chapter on Appeals and Revisions.

5.14. Arrears under item 8 represent sums with regard to which penalty under Section 46(1) of the Income-tax Act was levied. In our opinion, the provisions of Section 46(1) are not being put to sufficient use. This conclusion gains further strength when the arrears appearing under item 9 are also taken into consideration. They show that even though tax had become due, no action for recovery had been taken by the Department

for effecting collections and the assessee appear to have been granted a free respite in the matter. Any inaction in this respect on the part of the Department will result in the State being put to loss at least for the amount of interest for the period of default apart from the ever present danger that collection may become difficult or even altogether impossible on account of delay. We have, therefore, considered it necessary to provide against such losses to the State and recommended in para 5.52 of this Chapter for an automatic accrual of interest when taxes remain unpaid with or without the knowledge or consent of the Department.

CAUSES OF ARREARS

5.15. We now turn our attention to the causes which have led to the present state of affairs. The arrears which constitute mainly a legacy of the Second World War period are the cumulative result of a large number of causes of which the following are the most important:

- (1) During the War years, the Department was chronically understaffed and upto the end of the War, its strength remained almost static while the amount of taxes demanded and collected increased over ten-fold.
- (2) Though the Department was gaining momentum in the field of recruitment and training of officers since about 1940, a sufficiently large number of fully trained officers were available for assessment purposes only after a time. This resulted in assessments being framed without a proper appreciation of the full facts of the cases.
- (3) When enormous incomes were being earned a mere skimming of the surface of a few important cases could result in substantial revenues and hence difficult and complicated cases requiring detailed investigations remained neglected.
- (4) In the post war years, the assessments relating to the war time period were getting time-barred and they were completed almost in a hurry and some of them resulted in over assessments.
- (5) Many persons who made bountiful profits during war years had engaged themselves in speculation and lost their monies. Many had arranged their affairs in such a way that by the time their assessments were completed, their incomes and assets were kept out of reach of the Department.
- (6) Even after the War, there were many instances of assessments completed on substantial facts regarding the income of the assessee, in which the Department found it difficult to locate the assets from which taxes could be recovered.
- (7) The partition of the country also added to the gravity of the situation when many assessee left India leaving behind no assets or income from which the taxes could be realised.
- (8) Lack of uniformity in the powers and procedure governing collection of arrears of tax under Section 46(2) of the Income-tax Act due to the variations in the laws of the different States and also the differential effort put in by the State officials who looked upon this branch of their work as of only

secondary importance constituted an important cause for the accumulation of arrears.

- (9) The sparse use to which the powers of write off were being put to is yet another reason for the continued existence of huge sums as arrears.

Broadly, it can be stated that both belated assessments as well as over assessments are responsible for a major portion of the existing arrears.

WRITING OFF AND SCALING DOWN OF TAX DEMANDS

5.16. We have already stated that a very large portion of the sums shown as arrears is clearly irrecoverable and should be written off immediately. A write off of the taxes in arrears constitutes merely a cancellation of the sums from the departmental books and does not amount to a permanent waiver by the Government of its claims. Action is possible within a period of sixty years from the date of the claim if, subsequently, it appears to the Government that the defaulter is possessed of any assets or other means.

5.17. Under the Delegation of Financial Power Rules, Commissioners of Income-tax, as Heads of Departments, have always had full powers to write off irrecoverable balances of income-tax demands, subject to a report to the next higher authority. Yet, we found that the powers were being seldom put to use. We were informed that there was a natural reluctance on their part to write off dues of the Government on a mere individual responsibility. To avoid the carrying forward of irrecoverable demands for indefinite periods merely on account of such a reluctance, arrangements already exist under which, for writing off amounts exceeding rupees one lakh in an individual case, a Committee consisting of two Directors of Inspection and the local Commissioner examines the financial position of the assessee and makes suitable recommendations to Government. We desire that the position should be regularised under the Delegation of the Financial Power Rules and, for this purpose, *we recommend that, by a suitable modification of the Rules, the powers of write off of the Commissioners should be limited to irrecoverable demands not exceeding two lakhs of rupees in an individual case and write off of amounts exceeding two lakhs in a case should be effected by a Committee consisting of the Chairman and two members of the Central Board of Revenue.* The Commissioners may delegate powers of write off to Assistant Commissioners and Income-tax Officers up to Rs. 5,000 and Rs. 250 respectively in each case. The present procedure of reporting to the Central Board of Revenue details of the amounts and the circumstances under which the sums were written off by the Commissioners and their subordinate officers should continue.

5.18. A suggestion made to us in this context was that, in deserving cases, the Department should have the power to scale down demands according to the paying capacity of the defaulters if the circumstances would justify such a procedure. It was pointed out to us that there was a large number of cases where the assets of defaulters were found to be heavily encumbered with prior mortgage or where there were disputes regarding ownership and other legal difficulties in enforcing recoveries. Instances were also said to exist where forced sales of assets of defaulters at auction did not fetch purchasers at reasonable prices. In such circumstances, it was

suggested that it would be advantageous and even prudent for the Department to negotiate with the defaulters and settle the liabilities at as high a figure as was possible and write off the balance.

5.19. We find that a similar situation existed in U.K., prior to 1949, with regard to arrears of taxes. The considerable increase in arrears since 1939 was adversely commented upon by the Public Accounts Committee and a departmental committee was appointed to examine the arrears, analyse the causes which lead to their growth and suggest steps for reducing arrears in the future. As a result of its recommendations, a system of discharging amounts judged to be clearly irrecoverable was introduced in 1949 and has been in existence since then. The remissions are effected mainly on grounds of poverty and equity and also cover instances where the amounts recoverable are seen to be insufficient to justify cost of proceedings. The amounts written off as irrecoverable cover instances of insolvency, composition settlement and where the taxpayers are untraceable.

5.20. The principle of settling liabilities through negotiations is not alien to the Indian Income-tax Act. Under Section 53 of the Act, the Assistant Commissioners have always enjoyed the discretionary power to compound cases. In a majority of the cases decided by the Income-tax Investigation Commission, it had adopted the method of settling liabilities taking into consideration the paying capacity of the taxpayers. Moreover, when the operative clauses of the Taxation on Income (Investigation Commission) Act, 1947 was declared *ultra vires*, Section 34 of the Income-tax Act was amended to provide, specifically, for a scheme of settlement of cases. In our view, there is nothing wrong in principle in scaling down demands and the writing off of liability in deserving cases and we recommend its adoption. However, great care should be taken to secure that this system did not give rise to the feeling amongst taxpayers that a premium was being set on defaults in payment of taxes and that those who did not pay taxes could get off lightly with it. Resort to such a procedure should be had only after all the legal means available for effecting collections had been exhausted and the Department was satisfied that not only was there no method of recovery open but also that, if any were applied, there were no chances of effecting recovery. We recommend that the powers of scaling down should be subject to the same monetary limits and should be administered by the same authorities as we have suggested in para 5.17 above with regard to write off of irrecoverable demands. We also recommend that the detail of both write off and scaling down of demands above a certain limit with all the attendant circumstances should be presented to the Parliament through the annual administrative reports of the Department.

5.21. It was suggested to us that a separate agency headed by a High Court Judge should be constituted for the purpose of sanctioning scaling down and writing off of tax liabilities. We do not consider that any additional benefits could accrue by forming a separate agency of the type suggested. The points needing decision in such matters will be of facts and not of law and for getting a speedy decision we feel that it is better that the matter should be handled by departmental officials who will be conversant with the facts and in possession of all the details regarding the financial position of the assesseees.

PROCEDURAL MEASURES FOR IMPROVING COLLECTIONS

5.22. *In our view, there is much that can be achieved within the present set up and legal structure itself to improve the collectibility ratio in the future and we mention below the most important amongst them:*

- (1) Statistics showed that assessments completed in cases with income above Rs. 50,000 numbered only 21,124 forming 3.1 per cent of the total number of assessments completed during 1957-58 and accounted for Rs. 167.23 crores forming 75.69 per cent of the total demand raised during the year. These figures are indicative of the position generally that the bulk of demand is concentrated in a small number of cases. If assessments were planned in such a way that cases involving substantial amounts of revenue were given precedence, the chances of collections would improve. We have already stressed the importance of it in the Chapter on Assessment.
- (2) Much progress in collection work could result if the question of payment of taxes was discussed in cases involving substantial demands with the assessee at the time of framing the assessment. Such a procedure would help in the saving of time now spent on deciding requests for payment of taxes in instalments and so on. These are matters which can be agreed upon between the assessing officers and the assessee at the time of finalisation of the assessments itself.
- (3) Timely issue and service of the notices of demand could improve matters considerably. Taxes become payable after assessments, only after the time allowed for payment in the notices of demand has expired. Hence, to expedite collections it is important that the notices of demand are served without any delay.
- (4) In instances of appeals where large amounts are locked up, the assessing officers should bring to the notice of the appellate authorities that fact and request for a priority being given to such cases. In the Chapter on Appeals and Revisions, we have suggested that the Appellate Assistant Commissioners might give precedence to the disposal of such appeals. Their early disposal would generally be welcome to the assessee.
- (5) The delays in the passing of orders under Sections 27 and 35 of the Income-tax Act as well as orders giving effect to appellate decisions should be avoided.
- (6) An improvement in the manner in which recovery certificates are issued can bring about better results. Many a time, these are issued in a routine manner merely to keep demands alive and the Collectors are not furnished with complete details regarding the assets of the defaulter. Much time is wasted in correspondence between the assessing authorities and the Collectors. We feel that if sufficient care is taken to see that the certificates are issued with details, complete in every respect, much can be gained in the matter of recoveries.
- (7) Assistance to the assessing officers in their collection work could bring good results. They should be relieved of the

routine administrative duties. In addition, while final decisions in the matter should be the responsibility of the assessing officers, we feel that if matters relating to recovery in cases were studied properly and put up to them by Inspectors, it would make for an improvement.

- (8) A more extensive use of distress warrants is yet another way in which improvement could be effected. At present, neither the Inspectors nor the assessing officers are fully conversant with the procedure in this regard. We suggest that the Inspectors and assessing officers should be given practical training in this aspect of the work. Arrangements for conveying the goods distrained and for storing them should also be provided.
- (9) Cordial relationship must be established between the State officials and the officials of the Income-tax Department at the district level. It would prove useful in securing better co-operation from the State officials in recovering the dues of the Department.

DEDUCTION OF TAX AT SOURCE

5.23. In the course of our enquiries, we found that the consensus of opinion generally was that the present system of collection and recovery was basically sound, although the system was capable of improvement in certain directions, to facilitate more efficient collections. Extension of the field of application of the principle of deduction of tax at source was one of the means suggested in this context. Collection of tax at source has been characteristic feature of the Indian Income-tax system almost throughout the long years of its history. Deduction of tax at source has certain obvious merits. Besides facilitating collection, it helps to automatically bring into the tax net income from investments which might otherwise escape altogether the notice of the revenue authorities. It is also convenient to a majority of tax-payers that the burden of tax is taken off before income reaches their hands. Apart from safeguarding the revenue, such a system also helps in reducing the costs of administration. It is a mere administrative device and is not intended to determine or modify in any way the burden of tax on assessee.

5.24. Both the Income-tax Investigation Commission and the Taxation Enquiry Commission had considered whether the field of applicability of the principle of deduction of tax at source could be extended to include items not covered under Section 18 of the Income-tax Act. The former was of the opinion that in spite of the obvious merit of the scheme that it reduced opportunities for evasion, there were limitations in its application in the circumstances prevailing in this country. It stated that except where the person making the deductions could be safely relied upon to pay over the amount to the Government or where such person could be singled out if there was default, the provision would be of little value. It also pointed out that deduction of tax at source on a large scale would greatly add to the number of refund claims and that the reputation of the Department in that field of work was already not very high. Hence, it was hesitant to recommend an extension of the principle of deduction of tax at source. For the same reasons, the Taxation Enquiry Commission also felt that it would not be advantageous to extend its applicability.

5.25. We agree that though the principle of deduction of tax at source has obvious merits in view of the security it provides to Revenue, there are clear limitations to its use. But we consider that

Contractors it could be gainfully extended to one specific instance for the purposes of the Income-tax Act viz., to cover payments made to contractors, a category of assessee who had not attained the same degree of importance as they have now assumed in the context of the development plans of the country, when the Income-tax Investigation Commission and the Taxation Enquiry Commission were considering the question.

5.26. We were impressed with the difficulties brought to our notice by the Department in the matter of assessment and collection of tax from the contractors. It was pointed out that the present system of requiring contractors to produce tax verification certificates before the granting of contracts had not proved sufficiently effective because firstly, the Central and State Government agencies had not invariably been insisting on submission of such certificates and secondly, they were not helpful to the Department in assessing and realising tax from new assesseees. Under the present system, income-tax verification certificates are issued in regard to the past liabilities and cannot cover liabilities which might arise as a result of the execution of the contracts for obtaining which these certificates were to be submitted. The real difficulty had been with regard to tracing out large number of recipients of substantial sums because the paying agencies seldom maintained complete details regarding the contractors. Particular reference was made in this context to the difficulties experienced in tracing out the whereabouts of contractors who had received large sums in connection with the work under the Bhilai Steel Project. It was pointed out to us that in the absence of any statutory authority, the paying agencies could not have insisted on the contractors furnishing details useful to the taxing authorities. In addition, it was suggested that any such insistence might have interfered with the pace of execution of the particular project.

5.27. We feel that at the existing tempo of governmental expenditure under the development plans, care has to be taken to syphon back to the State taxes which are legitimately due to it. Hence, we recommend that in instances where contracts are granted by the Central or State Governments, local authorities or statutory Corporations, the paying authorities should insist on tax clearance certificates for granting the contracts and should, in addition, retain 2½ per cent of the total value of the contract from the final or earlier instalments of payment, till the assessee produced a tax clearance certificate. We suggest that the law should be amended for giving effect to these recommendations as a statutory provision would help in strengthening the hands of the disbursing authorities for insisting upon the deductions. We also recommend that for this purpose the term "contract", should be suitably defined in the Income-tax Act, bearing in mind the possibilities of the provisions of law being circumvented through a splitting up of contracts into a large number of sub-contracts. In our view, there is no scope for extending the principle of deduction of tax at source either to cover further items under the Income-tax Act or to cover items under the other direct taxes Acts.

5.28. A further change we suggest is with regard to the requirement on the employers to file every month statements in the prescribed form of the deduction of tax from salaries paid to their employees. Under the Rule 11A of the Income-tax Rules, the Commissioner of Income-tax has the discretion to permit an employer to pay such tax in a lump-sum every

month based on an average amount of tax deductible and furnish a statement giving the prescribed particulars at the end of the year. It was pointed out to us that there were instances where the Commissioners of Income-tax may not be prepared to allow submission of statements annually though they considered that the statements could be required to be filed quarterly or half yearly instead of every month. To cover such cases, we recommend that Rule 11A should be modified in such a way that in deserving cases, while the payment of tax deducted should be made every month, the employers may be allowed to submit even quarterly or half yearly statements.

ADVANCE PAYMENT OF TAX

5.29. We now take up for consideration the various modifications suggested with regard to the system of advance payment of taxes. The scheme of payment of tax in advance was introduced by Section 18A of the Income-tax Act in 1944, as a temporary and anti-inflationary measure. However, it has grown into the tax system so well and become part of it, that its temporary character has faded into insignificance.

5.30. The following table shows the demand and collection of advance tax during the years 1954-55 to 1958-59:—

TABLE 3—*Progress of demand and collection under Section 18A of Income-tax Act.*

	1954-55	1955-56	1956-57	1957-58	1958-59
No. of cases	1,26,130	1,29,973	1,50,527	1,70,030	1,85,432
Demand raised	62.68 (32.4)	98.75 (37.2)	116.53 (32.9)	126.60 (33.5)	131.75 (32.8)
Collections	80.93 (50.7)	89.90 (53.3)	106.43 (53.9)	115.54 (53.4)	129.78 (54.7)

[Figures of demand and collections are in crores of rupees. Figures in brackets represent percentage formed of total demands and collections.]

The importance of advance collection of tax would be clear from the above. The table shows that there was a continuous increase in the amount of tax collected in advance and it formed more than 54 per cent of the total collections during 1958-59. The number of cases liable for action also improved from 1,26,130 in 1954-55 to 1,85,432 in 1958-59.

5.31. Several witnesses suggested that the system of collection of advance tax under the Income-tax Act should be abandoned. It was suggested that the scheme of advance tax was introduced as a temporary measure during the war time and hence it should now be removed from the statute book. The desirability of continuing the system of advance payment of taxes has to be judged on its merits without being prejudiced by the historical basis of its origin. Under the Income-tax Act, tax is levied on the income of the previous year. Thus, there is a time lag between the accrual of income and the determination of the tax liability on such

income. In view of the accumulated arrear assessments, this time lag, more than anything else, has been responsible for the difficulties in collection of taxes. Under such circumstances, insistence on payment of tax as and when the income accrues and subject to adjustment at the time of assessment is undoubtedly advantageous. It is helpful to the assessee as well in that it facilitates payment of tax in suitable instalments spread over a year instead of their having to pay the amounts in a lump sum. The fact that since 1949, advance payment of tax is taken into account in the revenue has also to be borne in mind in this context. The existing system of collection of tax in advance cannot be altered without upsetting the financial equilibrium of the budget for the Government. If a change is suggested, the system of collection of tax in advance may only an extension of the same principle as governing the collection of tax through deductions at source. As long as the system of advance payment continues, there is no harm in extension of financial provisions relating to advance payment on basis of income on which taxes are not deductible at source. *Hencefore, in our opinion, collection of tax in advance under the Income-tax Act should continue.*

5.2. Another line of criticism levelled was with regard to the difficulties of assessing income in estimating the income with the high degree of accuracy which is necessary as it was being assessed and before the Income-tax Officer. The essence of the line of argument is that, because of the high degree of accuracy required, the margin of error may be as high as 10 per cent or may be more. The one of the reasons, no doubt, of the high degree of accuracy required is the fact that the Government and provide reasonable protection to the interests of the general taxpayer. Every assessee gets a minimum period of six months from the closing of his account year before he is required to pay the next instalment of tax. He can also submit revised estimates as the year progresses and pay taxes on the basis of such revised estimates. However, we feel that to alleviate the grievances of the assessee, the rate of error now fixed at 20 per cent should be brought to 10 per cent. *We, therefore, recommend that an assessee should be entitled to an error margin of 10 per cent if his estimate is not found to be correct and he has paid tax on the basis of such estimate, after making adjustments for the amount of tax on which tax is deductible at source and also for the effect of the rate of tax made by the subsequent Finance Act.*

5.3. Under the Income-tax Act advance tax is to be paid on the basis of the total income of the latest previous year 10 per cent of which a person had been assessed. To amend this provision, an Income-tax Officer is empowered under Section 18A of the Income-tax Act to revise the demand made under Section 18A if an assessee or a business man is so empowered. It was stated that this amendment was not a desirable one and it was only in instances where some minor revision in demand was beneficial to the Revenue and then where a subsequent assessment was considered on an income lower than the figure at which demand under Section 18A had been raised, the officers failed to revise the demand. We do appreciate that a good deal of convenience can accrue to assessee if their funds which are unnecessarily locked up in government account are released for their use. We find that the Taxation Enquiry Commission had suggested that the revision of an original demand under Section 18A of the Income-tax Act should be made an obligatory one. We were informed that executive instructions had been issued that the revision should be effected irrespective of whether it was beneficial to Revenue or not. *However, we feel that the position should be made clear in the*

statute itself and, therefore, we recommend that the term appearing as 'may' in the third proviso to Section 18A(1) of the Income-tax Act should be changed to 'shall'.

5.34. It was suggested that as good deal of difficulty was being experienced in the matter, income deemed to accrue or arise to non-residents under Section 42 of the Income-tax Act and assessed on a person deemed to be an agent under Section 43 of the Act should be excluded from the purview of Section 18A. The argument advanced in this respect was that very often a person having dealings with a non-resident was not aware that he was likely to be deemed as an agent under Section 43 and assessed for the income deemed to accrue or arise to the non-resident. The determination of the liabilities under Sections 42 and 43 generally take much time and as the law required the question of agency to be determined for each year it was pointed out that the difficulty was always present. However, we do not think that a change along the lines suggested is called for. *The liability arising under Section 42 of the Income-tax Act is on the non-resident. Merely for the fact that resort to a procedural section like 43 of the Act is made for effecting assessments and recovery of tax, it cannot be argued that the liability otherwise arising to a non-resident should be reduced. As regards the charging of interest and levy of penalty for non-payment of correct amount of tax on due dates, discretion is already vested in the authorities. Hence no modification in the present position is suggested.*

5.35. The distinction made between new and old assesseees and requiring the former to submit estimates and pay tax on their own responsibility was stated to be bad in principle. Where a new assessee fails to file his estimate of advance tax but makes voluntary return of income for a number of years and the Department fails to finalise assessments for any of these years, the assessee is treated to be in default and charged interest and subjected to penalty for each of these years.

Distinction between old assesseees and new assesseees

5.36. We feel that the present distinction is unavoidable because in the case of a person who has not been assessed before, the Department will not be having any basis for ascertaining the amount of advance tax payable by him. It has, therefore, to be necessarily left to the person concerned to make his own estimate of the tax and pay it accordingly. We agree that a prompt completion of the assessment in such cases could reduce the period of default under Section 18A(8) of the Income-tax Act. It is not fair, in our opinion, to treat an assessee to be in default for the period of time between the submission of his return and the passing of the assessment order because of the inactivity on the part of the Department and then penalise him for the default. The hardship pointed out is not the result of any inherent defect in the provision of the Act and can be remedied quite independently of Section 18A being essentially an administrative problem. We find that discretionary powers have already been granted to the Income-tax Officers to reduce or even waive interest payable under Section 18A in certain circumstances. *No modification seems to be necessary, therefore, in the law.*

5.37. Under the present provisions of Section 18A, the amount of advance tax demanded in the case of persons already assessed is calculated on the basis of the assessment completed for the latest year and at the rates of the current financial year. It was said that this procedure was unnecessary in that it necessitated fresh calculations of tax

for payment of advance tax at the current rates. A suggestion made to us was that this requirement to calculate tax at the current rates should be given up and the notice issued under this Section should be a mere repetition of the notice of demand resulting from the latest completed assessment. It was pointed out that such a procedure would make available quite an amount of time to the Department which could be utilised for better purposes. We agree that a modification along the lines suggested would constitute a definite improvement on the present procedure. It would not in any way affect the liability of assessee, because the right of assessee to submit estimates on their own would continue unaffected. Except where a 'current rate' was likely to be lower, the assessee stood to lose nothing under the revised system. If suitable amendments were made to enable assessee to estimate their income and calculate the tax payable on such income at the current rate, this difficulty would resolve itself. We, therefore, recommend that the present provisions should be modified and for the purposes of Section 18A, the Income-tax Officer should merely repeat the demand relating to the assessed income of the latest year. The assessee's right to make his own estimate and pay tax on that basis should continue. While the notices in respect of existing assessee should refer to the total income and tax payable as at present, in respect of new assessee who make payments for the first time, it should be necessary to enumerate the sources of income also.

5.38. Another suggestion made to us was that as the system of payment of tax in advance had been in existence for a sufficiently long time, the assessee could be expected to be aware of their obligations and hence it might now be made the responsibility of all assessee, both old and new, to submit estimates of their income and pay tax on the due dates on their own initiative and without any need for issue of notices by the Department. We are unable to agree with this suggestion. We are of opinion that the initiative for action under Section 18A with regard to persons already assessed should continue to be with the Department as otherwise it will be a very difficult problem, administratively, to secure compliance. Hence, the present provisions need no change in this respect.

5.39. Another suggestion we have to make is with regard to the dates on which advance tax is to be paid. At present, the last instalment for the payment of the advance tax under Section 18A of the Income-tax Act falls on 15th March of the financial year. It was brought to our notice that, on account of the delay which generally occurs, in receiving intimation from the Treasuries regarding payments by the assessee, the Department got little time to see that the entire amount of advance tax payable by an assessee during a financial year was duly paid within the year itself. Difficulties were also said to have been experienced by the Department in accounting for the receipts of the advance tax before the close of the financial year, and in the timely preparation of statistical statements. In order to get over these difficulties, we recommend that the date for the payment of the last instalment of advance tax should be advanced by 15 days. Correspondingly, the dates for the payment of the other

instalments should also be similarly advanced. Thus, the instalments should be due on the 1st of June, 1st of September, 1st of December and 1st of March every year instead of the 15th of each of these months. However, to obviate difficulty to assesses whose accounting years correspond to the financial year or the 'Baisakhi' year, they may be allowed to submit estimates by 31st March of the financial year and pay the last instalment of advance tax by that date.

5.40. We have considered the usefulness of extending the system of payment of tax in advance to the Wealth-tax and Expenditure-tax Acts. In view of the fact that later on we are suggesting introduction of provisional as well as self-assessment under these two Acts, *we feel that it is not necessary for the present to introduce a system of payment of taxes in advance.*

PROVISIONAL AND SELF ASSESSMENTS

5.41. The present system of provisional assessment under Section 23B of the Income-tax Act is complementary to that of advance payment of taxes. It is advantageous in that it allows the taxpayer to pay far in advance of the dues on which it would otherwise have come on the basis of regular assessments which generally take some time to get completed. Statistics furnished to us would that in certain areas and were being collected under this system. The collection improved from Rs. 17.30 crores in 1953-54 to Rs. 25.22 crores in 1958-59. The number of assessments also registered an increase from 5,377 in 1953-54 to 11,940 in 1958-59.

5.42. As an improvement on the present system it was suggested that a system of self-assessment under which assesses are required to pay advance tax on their own along with their returns might be introduced in the statute. It was also suggested that till such time as was necessary for the new system to be accepted and understood as a regular feature of the tax system, provisional assessment might also be continued along with the system of self-assessment.

5.43. *We do not favour the introduction of a system of self-assessment either as an addition or as an alternative to the existing procedure of provisional assessments under the Income-tax Act because we are sceptical about the advantages that can accrue to the Administration under it.* Moreover, the experience of countries like U.S.A. with this system has not been a happy one as could be seen from the observation of a leading authority on the system of taxation obtaining in that country who said "In a self-assessed tax, the major administrative problem is to secure accurate reporting by the taxpayers. No subsequent audit or enforcement means can take the place of a tax paying public filing correct returns. The present system with regard to the Federal Income-tax cannot be considered satisfactory; a sample study of the 1943 returns indicated that on an average one-fourth of the returns were incorrect".* We do not think that it would be prudent to leave the entire initiative in this matter to the assesses. Such a gesture might well add to the existing difficulties of the Department. It would also be difficult for assesses to effect exact computations of the taxes. With regard to Section 23B of the Income-tax Act itself, we feel that it might not be worthwhile to effect provisional assessment in every case. *Hence we recommend that provisional assessments need be made, generally, only in cases where the*

*The Federal Taxing Process by Roy Blough.

income returned is above Rs. 20,000. We also recommend that such of the income as is shown in Sect on D of Part I of the Income-tax Return and claimed to be not taxable should not be included in the pre-paid assessment. The assessing officer should also hold over the tax with regard to the foreign income so far as the assessee in the Return to the extent to which the double income-tax relief is claimed so that the collection is determined after deducting such amounts to be held in advance.

544. While we do not favour introduction of a system of self-assessment under the Income-tax Act, we are of opinion that it should be introduced under the Wealth-tax and Expenditure-tax Acts. The number of assessable undertakings under these Acts are comparatively smaller and the class of assesses in the higher income groups, would be expected to be acquainted with the requirements of the law and able to discharge their obligations to the State voluntarily. We recommend that the *Wealth-tax and Expenditure-tax Acts* should be amended to provide both for a system of *prima facie* assessment under the Power of Section 233 of the *Income-tax Act* and a system of self-assessment under which assesses are required to supply information as to their wealth or expenditure for self-assessment.

TABLE 14-8. FOR PAYMENT OF TAXES

[illegible]

While the Commission is not to remain indifferent to the experience by which the staff of the Commission has been due to lack of facilities for the collection of the necessary information, we recommend that arrangements should be made for the collection of banking payments and cash-in-transit receipts, and for the collection of other data for this purpose. We also suggest that the Commission should be authorized to require all payments or payments made by the Government to be paid by check, and that the Commission should be authorized to explore, by a special inquiry, changes in all scheduled payments and receipts, and to require the Government to submit a report to the Bureau of the Commission on the results of such inquiry. The Commission should be authorized to require the Government to submit a report to the Commission on the results of such inquiry, and to require the Commission to submit a report to the Commission on the results of such inquiry.

system of rebates exists under the Gift-tax Act. Under Section 18 of the Act, a rebate is granted in respect of advance payment of tax if the taxable gift amounted to not less than Rs. 10,000 and the payment of tax is made within 15 days of making of the gift. The assessee is credited in final assessment with an amount equal to the amount of tax paid by him plus 10 per cent thereon. We, however, feel that the extension of this principle to the other direct taxes Acts, especially the Income-tax Act where a major portion of the total collections is being effected now through Sections 18, 18A and 23B, will result in a substantial loss to the State. We consider that it is the duty of every citizen to pay the taxes due to the State by the due dates and it is not necessary to provide any incentive in this regard. We feel that a system of rebate might amount to discrimination amongst the various assessees; for example, such a provision under the Income-tax Act would mean a discrimination in favour of assessees having income on which taxes are not deducted at source compared to those who derive income from salaries or securities or dividends. There will also be the complications regarding the calculation of the rebate. In any case, unless the rate of rebate itself is substantial it is not likely to prove attractive to assessees to effect prompt payment. In our view, the same objective is achieved by the non-charging of interest in the cases of those who effect payments in time and charging interest from those who delay payments. Apart from these considerations, we are convinced that the problem of arrears essentially is constituted by non-payment of tax by assessees who are habitual defaulters and who cannot be influenced by any such inducement. We, therefore, do not favour the introduction of a system of rebates and discounts under the other direct taxes Acts.

5.48. With regard to the system of rebates obtaining under the Gift-tax Act itself, it was represented to us that certain difficulties were being experienced in the actual working of the system of rebates. It was stated that as the provision stands at present, the amount of advance Gift-tax required to be paid by an assessee would, in some cases, be more than the amount of Gift-tax that would become payable ultimately on final assessment. In our opinion, this situation should be remedied. We suggest that Section 18(3) of the Gift-tax Act should be so modified as to provide that the amount of tax to be paid under sub-section (1) of Section 18 of the Gift-tax Act should be the tax that would have been payable under the Schedule had all gifts made during the previous year, including the gifts under consideration, been assessed to gift-tax at the rates given in the Schedule.

INTEREST AND PENALTY IN CASES OF DEFAULT

5.49. In case of default in the payment of tax, Section 46(1) of the Income-tax Act, which has been in terms incorporated in the other direct taxes Acts, permits the levy of penalties not exceeding the amount of default. We are surprised to note that although arrears of taxes have been mounting, the powers under these sections have not been used in vast majority of cases. Statistics furnished to us showed that out of the total arrears during an year, the amount in respect of which penalty had been levied was negligible. Thus, while total arrears during 1958-59 stood at Rs. 271.60 crores, the amount in respect of which penalty had been levied was only Rs. 1.81 crores. It was also noticed that no action at all had been taken in respect of Rs. 43.33 crores of taxes

which had become due for collection by the 31st March 1959. While we can understand the disinclination on the part of the Department to levy penalty in cases of chronic default as such a procedure would only help in swelling further the amounts in arrears, we are unable to appreciate large sums of taxes due to the Government being left unattended to. We have, in the earlier paragraphs of this Chapter, already commented that by such inaction on the part of the Department, the chances of recovery recede and that in any case Government is being put to the loss of at least the amount of interest on the sums for the period for which the delay in payment occurs. The same result obtains in instances where the Department allows the assessee to pay the taxes in instalments. While we agree that requests for instalments should be sympathetically considered, we feel that proper arrangement should be made to make good the loss to the Government on this account. With a view to discouraging the assessee from making requests for instalments and also providing against the loss of interest which the Government would be put to by granting instalments or through any inaction on the part of the Department, we feel that the taxing statutes should be amended to provide for an automatic accrual of interest for the period of default.

5.50. We find that both in U.K. and in U.S.A., there are statutory provisions for an automatic accrual of interest to cover defaults in tax payments. In U.S.A., interest at six per cent accrues automatically from the due dates to the dates of actual payment. The addition of such interest is mandatory. In U.K., the provisions apply only where the default is in respect of taxes payable on Schedule D assessments relating to income from a trade, profession or vocation and also in respect of surtaxes. In India, except under sub-sections (6), (7) and (8) of Section 13A of the Income-tax Act, 1922, the direct taxes Acts do not contain any provision for the charging of interest on the amount of tax due when the payment is delayed. We were informed that since 1952, under executive instructions, Income-tax Officers had been required to secure agreement from assessee to pay interest at three per cent on amounts allowed to be paid after the due dates as a condition for the granting of instalments and that ordinarily such interest was calculated for the period from the due dates to the dates of actual payments.

5.51. We are of the opinion that the present system of a mere insistence on assessee agreeing to pay a penalty in the form of interest as a prior condition for grant of instalments or postponement of recovery is not satisfactory. Moreover, in the absence of a statutory provision governing the levy of interest, if an assessee, who initially agreed to pay interest and was granted instalments, defaulted subsequently, the Income-tax Officers have no powers to proceed against them for the recovery of interest agreed upon.

5.52. The Law Commission has recommended an amendment to Section 46(1) of the Income-tax Act to allow for an automatic accrual of interest at ten per cent on defaults beyond a period of three months from the due date. It has, however, suggested it as an alternative to the levying of penalty. We do not agree with this view. We are of the opinion that provisions should exist sanctioning the charging of interest as well as the levying of penalty. Each is meant to serve a different purpose. We regard the charging of interest as a preventive measure inasmuch as it would discourage taxpayers from delaying payment of taxes on due dates, while penalty constitutes a punitive measure. There is nothing illogical or contradictory in having both the provisions side by side. At present,

Section 18A of the Income-tax Act contains provisions for both the charging of interest and levying of penalty. As we do not favour the provision of an automatic accrual of interest as an alternative to penalty, we feel that the rate of interest should be only six per cent which is the figure mentioned under Section 18A of the Income-tax Act. We therefore, recommend that without prejudice to the provisions of Section 46(1) of the Income-tax Act and the corresponding sections of the other direct taxes Acts, the Acts should be amended to allow for automatic accrual of interest at six per cent when taxes are not paid on the due dates. The statutes should be so amended to make clear that the interest would accrue without there being any requirement for issue of an order by the assessing officers. We would, however, add that normally in a case where time is granted to an assessee for paying the taxes in instalments, such interest should accrue only where the assessee fails to pay the instalments on due dates or otherwise defaults; penalty under Section 46(1) of the Income-tax Act and the corresponding sections of the other direct taxes Acts, may also be levied in appropriate cases at the discretion of the assessing authorities.

LIEN IN FAVOUR OF REVENUE

573. As a means of safeguarding the interests of the revenue against losses resulting from default on or income and assets before assessments are made or interest on a suggestion was made that one might consider whether, subject to a provision, could be made to grant Revenue an overriding claim on the income and assets of an assessee over all the unsecured creditors and that such priority should accrue from the first date of the assessment year or from the last day of the relevant previous year before assessments are framed and notices of demand served on the assessee.

574. Our attention was drawn to Section 30 of the Gift-tax Act and Section 74 of the Estate Duty Act, which grant priority to Revenue for recovery of gift-tax and estate duty even over secured creditors by making the taxes a first charge on any immovable property gifted or passed on death. Bonafide transfers of properties for valuable considerations are made an exception under both the Acts. We are of the opinion that these provisions are not capable of a general extension to apply to Income-tax as well. The circumstances governing levy of income-tax differ widely from those governing levy of gift-tax or estate duty. The inconvenience to the large number of assesses which is likely to be caused by an extension of this principle to the Income-tax Act is far too great and this deters us from recommending an extension of the principle to it.

575. Under the present law, the State enjoys a priority over an unsecured unsecured creditors for realisation of its dues from out of the property of the assessee. Even though the period for which such rights accrue to the State differs according to the circumstances, the right itself becomes effective only after the amounts are determined to be due from assesses. We do not think that the Government should be granted an unrestricted lien over the assets of assesses. Such a procedure will amount to interference with the normal working of the Commercial activity. We do not think that such a drastic measure which will interfere with the normal conduct of commercial transactions should be brought into existence merely for facilitating collection of taxes. There is no reason why the rights of unsecured creditors should be jeopardised and

made subject to claims arising from assessments which may be completed at any time. A lien can be justified only with regard to a known and determined liability. *We do not, therefore, favour the granting of an unrestricted lien without any time limit in favour of Revenue over the assets of an assessee.*

5.56. While we do not favour any modification of the present system of assessment with reference to the income, wealth, gift etc. of a previous year, we do feel that a case exists for providing the Department with sufficient powers to deal with situations where it comes to know that assets or income are being alienated by an assessee thereby jeopardising collection of taxes unless timely action is taken. The principle of making an assessment on the income of the assessment year itself is already available under Section 24A of the Income-tax Act. *With a view to safeguarding the interest of the State, we recommend that when the Commissioner of Income-tax is satisfied at any time that an assessee is trying to alienate his assets to defraud the State of its revenue, he may direct the Income-tax Officer to immediately assess the total income of the assessee from the expiry of the last previous year to any such date as well as for the years not assessed, on the lines of Section 24A(1) of the Income-tax Act.* The procedure of assessment and the period of notice will be the same as given under Section 24A(2) of the Act. If the Commissioner has reason to believe that the assessee would, during the period of notice, transfer his assets, he should inform the registration authorities and take such legal steps as may be necessary to prevent the transfer.

RECOVERY FROM COMPANIES AND SHAREHOLDERS

5.57. Next, we turn our attention to the problems involved in effecting recoveries from companies in liquidation. The general powers of recovery under the Income-tax Act are limited to a great extent where the recoveries relate to amounts due from a company in liquidation. This situation arises as a result of two factors viz., (i) the distinct status of a legal person enjoyed by a company on its registration under the Indian Companies Act and its existence in law as an entity separate from the shareholders constituting it, and (ii) the provisions in the Companies Act which govern the distribution of the assets of a company on liquidation.

5.58 Under Section 530(1)(a) of the Indian Companies Act only revenue, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date defined in clause (c) of sub-Section (8)*, and having become due and payable within the twelve months next before that date, have priority over all other debts in the case of winding up of a company. This provision along with the decision given by the Federal Court in the case of *Shiromani Sugar Mills Ltd.*** where it was held that if the demand for a period of twelve months preceding the date of liquidation was made subsequent to such date, the

* “(c) the expression ‘in the relevant date’ means—

- (i) in the case of a company ordered to be wound up compulsorily, the date of the appointment for first appointment of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and
- (ii) in any case where sub-clause (i) does not apply, the date of the passing of the resolution for the voluntary winding up of the company.”

State cannot have any preferential claim over the assets of the company as on the date of the winding up no taxes had become due to the State, restrict unduly the rights of Revenue to collect taxes due from companies in liquidation.

5.59. The Income-tax Investigation Commission had suggested the Indian Companies Act should be amended to allow preferential payment of taxes relating to one year's assessment if assessed for a period prior to the winding up, notwithstanding that the assessment was not made until after the winding up. This had been endorsed by the Taxation Enquiry Commission.

5.60. A certain amount of delay is inherent in the nature of Income-tax proceedings. It is not possible to anticipate a company going into liquidation and complete assessments expeditiously in the case and raise the demand before the date of winding up or liquidation of the company. In any case, even with the utmost expedition, the assessment on the profits made during the period immediately before the winding up cannot possibly be made until the succeeding financial year. In such circumstances, we consider that the suggestion made by the Income-tax Investigation Commission appears to be the minimum necessary to meet the requirements of the case and, therefore, *we recommend that Section 530 of the Companies Act should be modified to the extent of allowing preferential payment of one year's assessment if assessed for a period prior to the winding up notwithstanding that the assessment was made subsequent to the winding up.*

A practical difficulty in giving effect to a provision granting priority of claim without any time limit was pointed out to be that it would jeopardise the interests of a large number of creditors. It was stated that the creditors would have lent monies according to the circumstances prevailing at the time the loans were advanced and if unforeseen demands from the Department were to come subsequently without any time-limit and rank as preferential claims, they stood to lose heavily. It was stressed that such a procedure would make it extremely difficult for companies to raise sufficient finance.

5.61. We agree that a provision granting preferential claims to the tax demands without time limit might deter the inflow of working capital from unsecured creditors and is, therefore, an impediment to the growth of corporate enterprise. However, the fact that the absence of such a priority in favour of Revenue is being taken advantage of by some companies to avoid payment of tax cannot be denied. Statistics show that taxes due from companies in liquidation has continuously been on the increase. While they stood at Rs. 2.64 crores in 1953-54, by 1958-59, they had increased to Rs. 7.18 crores—an increase of nearly 300 per cent within a period of six years. A major portion of these arrears are known to be taxes due from private limited companies. It was brought to our notice that there had been instances where private limited companies, which had made good profits were voluntarily wound up before the Income-tax authorities were in a position to make assessments. Therefore, we feel that a method which would protect the interest of revenue and, at the same time, not act as an obstacle to the growth of genuine corporate organisations has to be evolved. Taking these circumstances into consideration, we feel that a different treatment for companies in which the public are not substantially interested would be justified. *We, therefore,*

recommend that the statute should be amended to secure that the priority for the recovery of tax in the case of companies in which the public are not substantially interested within the meaning of Section 23A of the Income-tax Act obtains without any time-limit.

5.62. The need for timely intimation regarding the commencement and completion of liquidation proceedings in the case of a company is great.

Generally, the Income-tax authorities are hardly aware of the winding up proceedings and by the time liquidation they gain the information and complete the assessment, the assets of the company might have been distributed with the result that taxes become irrecoverable. It was pointed out that in certain instances the assets of a company have been hastily distributed and the name of the company got struck off from the register by the Registrar of Companies. To get such a company restored to the register requires costly and prolonged litigation. Under such circumstances, placing specific obligations on the liquidator to intimate the fact of his appointment and also insist on his securing a tax clearance certificate before the assets of a company are distributed or compel him to set apart assets of the value equal to the tax that may be due or may become due, as may be intimated by the Income-tax Officer, appear to be necessary. The Income-tax Investigation Commission had recommended that a legal obligation should be placed on the liquidator to give notice to the Income-tax authorities within a specified period after his appointment and, on hearing from the Income-tax authorities to set aside sufficient assets towards the tax due. Provisions along these lines were attempted to be introduced by Clause 25B of the Income-tax (Amendment) Bill, 1951.

5.63. We find that in U.S.A., information of a contemplated dissolution or liquidation is to be intimated to the Commissioner. Every Corporation is required to render within 30 days after it adopts a resolution or a plan for its dissolution or for the liquidation of the whole or any part of its capital stock, to the Commissioner a correct return, verified under oath setting forth the terms of the resolution or plan and other information which may be required by the Commissioner under prescribed regulations*.

5.64. We recommend that similar provisions should be introduced in the Indian Companies Act. If necessary, the taxing statutes should also be suitably amended. We would also point out that once such intimation is received prompt completion of assessments is very important. The beneficial effects of the suggested changes will be vitiated and would result in unnecessarily prolonging liquidation proceedings if there is any delay in the completion of assessments and presentation of claims by the Income-tax authorities after they receive intimation of liquidation proceedings.

5.65. The Taxation Enquiry Commission had recommended that statutorily it should be provided that the Registrar of Companies should not

* Section 148 of the Internal Revenue Code, 1952.

“(d) CONTEMPLATED DISSOLUTION OR LIQUIDATION.—Every corporation shall, within thirty days after the adoption by the corporation of a resolution or plan for the dissolution of the corporation or for the liquidation of the whole or any part of its capital stock, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Commissioner shall, with the approval of the Secretary, by regulations prescribe.”

strike off a company from the register of companies without a tax clearance certificate from the Income-tax Officer. *We endorse this recommendation.* It should be ensured that the Income-tax Officers grant the certificates after completing all pending assessment proceedings in taking necessary recovery action within a period of six months of the receipt of a notice from the Registrar.

5.66. Whether Revenue should have a right to recover taxes from shareholders of a private limited company by holding them liable, jointly and severally, for the taxes due from the company was another question considered by us. An attempt had been made in 1949 to amend Section 41 of the Income-tax Act by the Income-tax (Amendment) Bill, 1949 to fix personal liability on the shareholders.

5.67. The Taxation Enquiry Commission had felt that, subject to adequate safeguards, it would be proper to accord a different treatment to private limited companies in this regard. It suggested that the tax due from a company, in which the public were not substantially interested within the meaning of Section 23A of the Income-tax Act, should be recovered from its shareholders but only in instances where the company had gone into liquidation. Even in such circumstances, it suggested that recovery should be effected from the shareholders only if the Commissioner of Income-tax was personally satisfied that the liquidation had been undertaken with a view to avoiding payment of tax.

5.68. The procedure of fixing liability on shareholders was opposed on the following grounds:

- (i) it militates against the principle of limited liability;
- (ii) it is difficult to justify a procedure of collection for private limited companies distinct from that for public limited companies;
- and
- (iii) such powers may be made use of by the Department for effecting recoveries even in cases where due to no fault of the company or its management the company's resources prove to be insufficient to meet its liabilities.

5.69. While we do not deny the force of these arguments, we are satisfied that the sanctity of limited liability is being increasingly made use of for the purpose of avoiding payment of the legitimate dues to the State by private limited companies. Hence, there does appear to be a case for metting out a different treatment to them after providing sufficient safeguards against the indiscriminate and injudicious application of the provision. *We therefore, recommend that in the case of companies in which the public are not substantially interested within the meaning of Section 23A of the Income-tax, the liability for the direct taxes should first fall on the assets of company, then on the directors of the company and lastly on the shareholders in proportion to their holdings.* In cases where the registered owners of the shares are different from the beneficial owners, the proportion of the liability to tax should be determined in accordance with the number of shares held by a person beneficially without confining it to shares actually registered in his name.

5.70. It was brought to our notice that considerable difficulty was being experienced in selling shares of private limited companies while effecting recoveries from defaulting directors or shareholders.

Sale of shares
attached

It was stated that though such shares were intrinsically valuable, none came forward to purchase them as the intending purchasers were not sure that they would be registered as shareholders. In order to obviate this difficulty, we recommend that it should be statutorily provided that if the existing shareholders or directors do not come forward to purchase these shares on the basis of the fair value determined according to the provisions of the Wealth-tax Act, the Department shall have the right to sell the shares by auction and the purchasers shall be registered as shareholders of the company, notwithstanding any provision to the contrary contained in the Memorandum and Articles of Association of the company.

RECOVERY FROM FIRMS AND PARTNERS

5.71. Recovery of tax from the partners of firms registered under the Income-tax Act seems to constitute certain difficulties. At present, a firm registered under Section 26A of the Income-tax Act or deemed to be registered under the provisions of Section 23(5)(b) of the Act is not liable to pay any tax. However, if the income of such a firm exceeds Rs. 40,000, it is subjected to a special levy of Income-tax in addition to the tax payable by the partners of the firm in whose hands income falling to their share are taxed along with their other items of income, if any. For the amount of special tax paid by the firm, the partners are granted abatement in their assessments, at their personal rates of taxation, on that part of the tax falling to them according to the profit sharing proportion. In the case of an unregistered firm, the firm itself is treated as a taxable entity and taxed on its total income. In effect, this means that the partners of an unregistered firm are jointly and severally liable for the tax levied on its total income. As against this, such a liability on a registered firm exists only with regard to the special tax levied on it when its income exceeds Rs. 40,000. In addition to this, there are certain specific instances enumerated under the Income-tax Act where the registered firm is held responsible for the taxes due from partners. Thus, the firm is responsible for the tax due from partners who are non-residents or residents in Pakistan. Even in such instances, the liability on the firm is restricted to the taxes due on the profits falling to the shares of the partners and the firm is not responsible for tax in respect of other items of income of the partners.

5.72. In our view, the difficulty arises from the distinction which exists between unregistered and registered firms in the matter of recovery in that while all the properties of the unregistered firm could be proceeded against and the partners are jointly and severally liable for the tax levied on the profits of the firm, in the case of a registered firm, for the tax levied on the profits of the firm assessed in the hands of partners, liability on the properties of the firm is limited to the extent of the interests of a defaulting partner in the property of the firm. In our opinion, this difference is clearly unwarranted and suitable modification in the statute should, therefore, be made to make the position clear that in the matter of recovery of taxes due on the profits from the registered firm, the position should not be different from what obtains in the case of unregistered firms. Such a change in the provisions would entail no additional hardship at all as regards the burden of tax, because the provision relating to the assessment of profits in the hands of individual partners would remain unaffected by it. It must be remembered in this context that the concept of

a 'registered firm' is a creation of the Income-tax Act and that registration under the Act is a concession granted inasmuch as the total income instead of being considered as that of a single unit gets taxed in the hands of the different partners at their personal rates of taxation. *We therefore, recommend that suitable amendments in the Income-tax Act should be made to secure that all the assets of the firm are liable to be proceeded against for realising tax due from the defaulting partner of a registered firm in so far as the demand relates to his share of income from the firm.* The other partners who meet such liability on behalf of the defaulting partner should have a right of reimbursement from him for payments made on his behalf from the assets of the firm belonging to them. However, full efforts should first be made to recover the dues from the defaulting partner himself and only after such efforts have proved fruitless should resort to recovery from the assets of the firm, be made. As for the tax due on the other items of the defaulting partner, only his interest in the property of the firm should be liable for attachment. If there are arrears due from both the registered firm as well as a partner and the assets of the firm are attached, the amount realised should be utilised first for meeting the tax due from the firm. This would be in accordance with the provisions of Section 49 of the Partnership Act.

RECOVERY FROM TRANSFERRED ASSETS

5.73. Our attention was drawn to the difficulties in respect of recovery in instances where the income arising to a person from an asset transferred was included in the total income of the transferor for assessment purposes. Such a situation could arise from two distinct sets of circumstances, viz., as a result of the deeming provisions of the Income-tax Act like Sections 16(1)(c) and 16(3), and also as the result of a finding by the assessing authorities that the person who is shown as the legal owner is only a benamidar and that the real owner is some other person. When assessments are completed under such circumstances, the question arises whether the taxes due as a result of assessments could be recovered by proceedings against the particular asset standing in the name of the transferee. Hence the question arises whether any specific provision should be introduced in the Act to cover such cases.

5.74. The adoption of such a procedure was opposed on many grounds. Firstly, it was felt that there was no logic for treating the income of one as the income of another and where the transfer was not real or was only a camouflage, the law granted sufficient powers to the authorities to pursue the transferee as a benamidar of the real owner. Secondly, it was pointed out that income-tax was a personal liability and was not a liability on the property assessed and hence the demand should be enforced against the person assessed. Thirdly, there was a view that it would create complications of a legal nature with regard to the determination of the real ownership of the properties. Fourthly, it was suggested that it would entail hardship in a case where the Department might have wrongly treated the property of one person as belonging to another.

5.75. The Income-tax Investigation Commission had pointed out that if the transfer was to be ignored for the assessment of the income, it would be logical to also do so for the purpose of the recovery of taxes so assessed. However, it stated that such a procedure might indirectly affect the title or interest of the transferee and may, in the event of subsequent disputes between the transferor and the transferee, place in the hands of the former the power to put the latter to harm or trouble.

Hence, it was not prepared to recommend that when the income from transferred property was assessed as the income of the transferor the tax thus assessed should be recoverable from the property so transferred. To obviate any such difficulty in the matter of collections resulting from the application of sub-sections (1) (c) and (3) of Section 16 of the Income-tax Act, it thought that it might be legitimate to provide that if the tax in respect of the income of wife or minor child could not be recovered, the income might be independently taxed as that of the transferees and that the tax so fixed might be recovered from their property including the transferred property.

5.76. As regards the demand arising from assessments made according to the deeming provisions of the Income-tax Act, the Taxation Enquiry Commission recommended that law should be suitably amended to provide for the assessments made on the person concerned being split up in proportion to the income personally belonging to him and that attributable to the assets held by the wife and the children and a demand should be raised separately on each one of them. However, where the income from property held by a *benamidar* is included in the assessment of the real owner, it felt that it would be justifiable to proceed against such property for recovery of taxes due from the real owner.

5.77. We have examined the question carefully and also considered the specific powers sought to be given to the taxing authorities in this regard under Clause 45A of the Income-tax (Amendment) Bill, 1951 as also the provisions of Section 33 of the Wealth-tax Act which cover the contingency of default by the person in whose hands wealth is deemed to be taxable by providing recovery of the portion of tax attributable to the transferred assets from the transferee. We feel that there is a need for a specific provision enabling the Income-tax authorities to proceed with recovery of taxes arising from assessments on the income arising from assets either under the deeming provisions of the Act or as a result of a finding by them that the legal owner of the asset is only a *benamidar* of another person. The purpose of the assessment is completely vitiated if the tax due as a result of such assessment cannot be recovered and we feel that the transferred asset should not gain any immunity from the recovery proceedings under the Income-tax Act. We, therefore, recommend that where it was not possible to recover taxes from the assessee in respect of the incomes aggregated under Sections 16(1)(c) and 16(3) of the Income-tax Act, the Department should have the right to proceed against the legal owner of the assets in respect of the share of tax payable on account of the inclusion of the proportionate income from such assets. However, in a case where the assessment has resulted from a finding of fact that the transfer was a mere *benami* transaction effected with an intent to evade tax, no such restrictions are necessary. In such cases, after the assessment has become final i.e. after the ownership of the property has been finally decided in the assessment proceedings, the assessing officers should proceed against the property held *benami* for realising taxes due from the real owner. The right of the aggrieved party to proceed in a Civil Court by filing a suit under the Code of Civil Procedure shall not, in any way, be adversely affected by this procedure, and the findings of the Court shall be binding on the Department as well.

SECTION 46(5A) OF THE INCOME TAX ACT

5.78. It was brought to our notice that Section 46(5A) of the Income-tax Act, as it was worded, failed in certain respects to achieve the object for which it was introduced and should, therefore, be suitably modified.

The Section was introduced in 1948, as a result of the recommendations of the Income-tax Investigation Commission. It authorises an Income-tax Officer to issue notice to a person who owes any sums of money or is likely to owe any money to an assessee requiring that person to make over the amounts towards the tax due from the assessee. If the garnishee ignores the notice and discharges any liability to the assessee he is held personally responsible to the extent of the liability discharged or the amount of tax due, whichever is less.

5.79. Under the present provisions, it is not possible to issue a garnishee order in respect of amounts of the assessee held in a joint account. We agree that it should be possible to attach the share of an assessee in such accounts also. *We, therefore, recommend that a provision should be made for enabling the Department to attach such joint accounts.* However, it should be ensured that cases where joint accounts are held by persons in a fiduciary capacity, for instance, as trustees or where the account is really that of the other joint holder (or holders), such accounts are not attached. Provision should be made for enabling the Income-tax Officers to freeze such joint accounts on issuing a modified form of the present garnishee order. Simultaneously, notices should be given to the assessee as well as to the other joint holder (or holders) to show cause within two weeks as to why the joint accounts should not be attached and after hearing the parties, the Income-tax Officer should determine whether the whole of the account or part of it belongs to the defaulting assessee and if he decides that it does, he must pass an order determining the share of the assessee in the account and also issue a garnishee order in suitable terms to the party in whose books the account stands and a copy of the order should be sent to the parties concerned. An appeal should be provided against such an order. It should also be ensured administratively that the Appellate Assistant Commissioner hears such orders within a month of their institution.

5.80. Another difficulty was that if the garnishee was to deny his liability to pay any sums to an assessee, the Income-tax Officer had no power under the Act to go into the question and decide whether the statement of the third party was true or not. The method of recovery under this section thus became effective only with the willing co-operation of a garnishee. It was suggested to us that the Income-tax Officers should be clothed with powers to enquire into and decide questions of title or of the truth or otherwise of the objections raised. *We do not think that this is necessary.* It is not as if the Department has no right for investigating the truth of the statement made by a garnishee under the present provisions. The only difficulty is that it has to apply to the Court for an adjudication on the liability of the garnishee. *However, we feel that the present law should be modified to provide that even where a garnishee, on whom the notice is served, disputes or denies the liability the account in question is frozen. In such circumstances, the Income-tax Officer should make inquiries and ascertain whether there is a prima facie case for proceeding against the garnishee and in case he is satisfied on that point, he should be empowered to file a suit in the Civil Court to establish the liability of the garnishee.*

5.81. Another difficulty pointed out was that in a case of default by a garnishee, the section sanctions recovery only through issue of a certificate to a collector. We are suggesting later, in this Chapter, changes with regard to collection of taxes through issue of recovery certificates and we feel that no modification is necessary in this regard.

PUBLICISING NAMES OF DEFAULTERS

5.82. It was suggested that it would be conducive to expeditious collections of tax if **Government were to give periodically** wide publicity to the names of defaulting taxpayers. We have considered this aspect of the matter in detail and are of opinion that such a procedure is not desirable under the existing circumstances and might not help in achieving the objective. **Apart from the fact that such publicity can be given only after a finality regarding the demands raised had been reached, i.e. only after the appeals, revisions and other proceedings are completed, it might also jeopardise chances of collection altogether by affecting adversely the credit and prestige of the assessee. We, therefore, do not favour the suggestion to publicise names of tax defaulters.**

FUNCTIONAL DIVISION BETWEEN ASSESSMENT AND COLLECTION

5.83. We now take up for consideration the usefulness of effecting a bifurcation of the functions of assessment and collection performed at present compositarily by Income-tax Officers, as a means for securing more expeditious collection of taxes and avoidance of accumulation of arrears in the future. There are two ways in which such a division may be brought about viz. by providing that the assessment and collection phases of work are handled by different agencies altogether or by a reorganisation of the office through a mere functional redistribution of work amongst the existing personnel.

5.84. The outstanding example of the former type of division of work is seen in the United Kingdom where different agencies are employed in the process of obtaining from assessee the amount of tax due. The assessing section merely engages itself in computing the liability of the various taxpayers. After the liability is determined, information is passed on by it to the collectors. The collectors who have no voice in the determination of the tax liability are solely responsible for collecting the amounts and accounting for them to the Accountant General. The assessing and collecting agencies are even geographically separate from each other and the personnel is not interchangeable.

5.85. It was pointed out to us that the merits of a functional division of work into assessment and collection are many. It was suggested that such a division of work would enable greater concentration of effort on the two different branches of work and thus make for an improvement to efficiency in each field. Assessment, it was pointed out was a specialised job and called for uninterrupted attention and concentration of efforts and it was best that the assessing officers were left to devote their whole time and attention to the **duty of determining the tax liability** unhampered by other duties. It was also mentioned that a separate collection division would also be in a better position to investigate and unearth the income and assets of defaulting taxpayers and effect realisation of the taxes.

5.86. We are, however, of opinion that it is better to continue with the present system and not divest the assessing officers of their responsibility for collection. The assessing officers are in a better position to

effect the collection because they are conversant with all the facts of the case and possessed of a detailed knowledge about the financial affairs of the assessee. A different set of officers would be lacking in this background knowledge. Moreover, if the responsibility of collection is taken away from the assessing officers there is every chance of over-assessments being made. It is interesting to note that even in U. K. when it comes to Surtax, both the levy and collection of it are attended to by the same agency, viz., the Special Commissioners. Again, such a division would constitute problems when it comes to decisions on request for instalments or for stay of collection, modifications resulting from appellate, review or revision orders and so on. It will also necessitate a great deal of movement of records and cross references and this is not likely to add to the convenience of the Department or the assessee. Unless complete co-ordination can be ensured, such a division of work would lead to a great deal of inconvenience to the assessee. We find that even in U. K. where the system has been in vogue for such a long time, difficulties were being experienced due to lack of co-ordination between the work of the tax office and the Collection Division. The Royal Commission in its Report stated, "More than one witness alleged that cases had occurred where applications for payment continues to be made although the taxpayer had the right to suppose that collections would be held over pending enquiry by the tax-office into some objections to the amount of assessment which he had notified to that office".* *In view of all these considerations, our conclusion is that no functional division resulting in the assessing officers being divested entirely of the responsibility for collection, is called for. Our recommendation in this regard is that the assessing officers should be relieved of the unnecessary routine work so as to enable them to devote more time to recovery work.*

CENTRAL REVENUE RECOVERY CODE

5.87. We now proceed to consider the modifications we feel are necessary with regard to the existing procedure of effecting recoveries through the agency of the State officials. At present, one of the methods provided in the direct taxes Acts for recovering arrears is the issue of recovery certificates to the Collectors, who are—officials of State Governments. On receipt of a certificate specifying the arrears of direct taxes, the Collector is required to recover the sums as if they were arrears of land revenue.

5.88. This link with the provincial set up has a historical background. Prior to 1922, the Provincial Governments were in charge of both the levy and collection of central taxes. The Income-tax Act, 1922 brought about the disengagement of the Provincial Governments from administering taxes levied by the Central Government but such disengagement was and continues to be confined to the assessment stage alone. Probably, lack of sufficient numbers of trained personnel working under the Central Government at that time as also the ready availability of officers of Provincial Governments already equipped in this regard made for the division of work only to this limited extent.

* Report of the Royal Commission on the Taxation of Profits and Income—Para 984, page 294.

5.89. The present procedure of invoking the provisions of the land revenue recovery codes of the various States which are intended essentially for the recovery of revenue from agriculturists, is not, in our opinion, well-suited for the recovery of direct taxes levied by the Central Government, the bulk of which is from non-agricultural sources. Apart from this, the present system necessarily involves collection according to the provisions of the various land revenue recovery codes which differ from each other in different States as regards both powers and procedures. Most of the codes provide for arrest and imprisonment while some do not. Again, some codes provide for appeals while no rights of appeal exist in others. They also differ from each other with regard to the assets which could be attached as well as the procedure of attachment. Some of these differences were commented upon by the Supreme Court in the following terms:

"Section 46(2) of the Indian Income-tax Act requires the Collector, on receipt of the requisite certificate from the Income-tax Officer, to proceed to recover from the assessee the amount specified in the certificate as if it were an arrear of land revenue. This means that the Collector must take such proceedings as he would have done if he were engaged in recovering land revenue. Thus a Collector in the city of Bombay in recovering the certified amount of income-tax must proceed under section 13 of the Bombay City Land Revenue Act, 1876 (Bombay Act II of 1876) and arrest and detain him for the period therein mentioned which, prior to the 8th October, 1954, might have worked out to a period much longer than six months. On the other hand, the defaulting assessee in all other parts of the State of Bombay has to be proceeded against under section 157 of the Bombay Land Revenue Code, 1879 (Bombay Act V of 1879), under which he cannot be detained for more than the period limited by the Code of Civil Procedure for the detention of a judgment debtor in execution of a decree for, an equal amount of money. So, even in one State there were two procedures to which defaulting assessees could be subjected according as they were in or outside the city of Bombay. A Collector in the State of Madras in recovering the certified amount of income-tax has to proceed under section 48 of the Madras Revenue Recovery Act, 1864 (Madras Act II of 1864). When the Collector finds that the certified amount cannot be liquidated by the sale of the property of the defaulting assessee and the Collector has reason to believe that the defaulter is wilfully withholding payment or has been guilty of fraudulent conduct in order to evade payment, the Collector may, under section 48 of that Act, cause the arrest and imprisonment of the defaulter, not being a female. But that section goes on to say that no person shall be imprisoned for a longer period than two years or for a longer period than six months, if the arrear does not exceed Rs. 500 or for a longer period than three months if the arrear does not exceed Rs. 50. A Collector in West Bengal proceeding to recover the certified amount under the Bengal Public Demands Recovery Act, 1913 (Bengal Act III of 1913), cannot, under section 31 of that Act, direct the detention of the defaulting assessee in prison for more than six months if the amount is more than Rs. 50 or in other cases for more than six weeks. The defaulter in

the Punjab cannot under section 69 of the Punjab Land Revenue Act, 1887 (Punjab Act XXVII of 1887), be kept in civil jail for more than one month. Section 148 of the U. P. Land Revenue Act, 1901 (U. P. Act III of 1901), limits the period of detention to 15 days and also exempts many persons, e.g., Talukdars and women from any imprisonment. The Assam Land and Revenue Regulation, 1886 (Reg. I of 1886), does not insist on imprisonment at all. A cursory perusal of the provisions of the different Acts referred to above will at once show that in the matter of recovery of arrears of land revenue the different States have prescribed different machinery, some obviously harsher than others.”*

5.90. The result of such differences in the land revenue recovery codes of the different States is that the uniformity attained at the assessment stage in the administration of the direct taxes Acts of the Central Government gets lost the moment a certificate is issued under Section 46(2) for the recovery of tax. This situation has got to be remedied. To get over these difficulties and to bring about uniformity of procedure and treatment, it has been suggested that a Central Revenue Recovery Code may be enacted.

5.91. We discussed this aspect of the problem with the State Revenue Ministers and their officers when we met them during our visits to the different States. While some of them felt that uniformity could be achieved by the Central Government convening a conference of the Revenue Ministers and indicating the lines along which the respective land revenue recovery code needed to be amended so that in the matter of recovery of direct taxes levied by the Central Government there could be uniformity both as regards powers and procedures, there were other who felt that it might amount to having two different codes—one for the recovery of central taxes and another for the recovery of the State revenues and that it might lead to complications in actual working. There were still others who felt that they were not experiencing any difficulty in the matter of recoveries of central revenues under the existing provisions, and therefore, did not find any reason for making any changes. In such circumstances, it will be difficult for all the State Governments to agree to amend their laws and thus effect uniformity in the modes and procedures of recovery. Their dis-inclination is understandable to a large extent, because each State Act has been evolved to suit the peculiar conditions prevailing in the State. Moreover, the land revenue recovery code of a State is meant also for the recovery of other levies in the State, which by their very nature will not be uniform as between the different States. In view of these circumstances, the only possible means of attaining uniformity appears to lie in the enactment of a Central Revenue Recovery Code.

5.92. The Law Commission has also commented on the variance in the procedure as well as powers in effecting recoveries under the revenue recovery codes in the various States and stated that whatever be the position in regard to recovery of tax levied by the States, there should be a uniform procedure in regard to recovery of Central taxes. With a view to achieving uniformity in the matter, it drew out, after a study of the provisions of the various States relating to recovery as also of the Code

*Parushottam Govindji Halai vs. Additional Collector of Bombay and others—28 I.T.R. 1955) page 896.

of Civil Procedure 1908, a list of the powers now available under them and also prescribed the procedure to be followed by the Collectors while engaged in the task of recovering income-tax and suggested them as a separate schedule to the Income-tax Act.

5.93. We feel, however, that the recommendations of the Law Commission in this regard are not sufficient to remove all the points of difference which now exist amongst the land revenue recovery codes. For example, in Schedule II under Part VI of the Income-tax Act as codified by the Law Commission it has provided for an appeal against the orders of a Collector "to the revenue authority to which appeals ordinarily lie against the orders of the Collector under the Law relating to land revenue of the State concerned".* As the revenue recovery codes differ from each other as regards the rights of appeal it does not seem to constitute an improvement in the present position. *What we visualise and recommend is a Central Revenue Recovery Code self-contained and complete in all respects.*

5.94. Apart from the difficulties caused by the lack of uniformity obtaining between the provisions of the different State laws, the manner in which the State officials have been conducting themselves and effecting the recoveries also came in for a good deal of criticism. There seems to exist a feeling that the present system is defective in its working. The dissatisfaction in this respect has reached such a stage that more than one witnesses suggested to us in all seriousness that we should recommend that a proportion of the arrears in each State covered by recovery certificates may be considered as contribution by the Centre to those States out of its divisible pool.

5.95. It was represented to us by the Department that the Collectors did not put in their best efforts in the work of realisation of Central taxes. Innumerable instances were said to have occurred where the State officials failed to take into account the full facts of the case and without even consulting or informing the Income-tax Officers granted liberal instalments jeopardising the interest of Central Revenues. It was pointed out that there had also been instances where the amounts paid by the defaulters were adjusted by the Collector towards the dues for particular years without any reference to assessing authorities, causing a great deal of accounting difficulties to the latter. It was represented that with the issue of a certificate under Section 46(2) of the Income-tax Act all that happened at present was that the initiative passed on to a group of officials over whom the Department had absolutely no control. Whenever, after the issue of a certificate, the Department agreed to requests for the grant of instalments or stay of recovery proceedings, the Collectors resented the action and considered it as interference with their work and they often played the role of a judge between the Department and the assessee. It was also pointed out to us that even after the issue of a Certificate under Section 46(2), the Collectors depended upon the assessing officers to furnish them with full details of the income and assets of the defaulters which could be attached by them and tender explanation on innumerable points. The arrangement made by the Central Board of Revenue with the State Governments for the appointment of special revenue officers to deal exclusively with income-tax collection work was also said to have proved inadequate. Hence, the Department felt that it was better that it effected the

*Law Commission of India, Twelfth Report, page 295.

collection of taxes on its own and for this purpose, it might be provided with necessary powers and other facilities.

5.96. The State officials were equally critical of the present system. They pointed out that certificates under Section 46(2) were being issued as a matter of course in a routine manner and with a view merely to keep demands alive. As these were often found to be incomplete in material particulars they were perforce required to refer back to assessing authorities for further details with consequential delay in disposal of cases.

5.97. The Taxation Enquiry Commission had considered the question of effecting collections by a separate revenue department under the Central Board of Revenue and independent of the State Governments and did not favour such a change because it felt that the State Governments have a vital interest in the collection as they had a share in the collections of the income-tax by the Centre and that they could be expected to do their best. It also suggested an extension of the system of appointing special revenue officers under the Central Board of Revenue. But it is our feeling, after an assessment of the evidence adduced on this point, that the system of collection through State authorities has not proved sufficiently effective and needs to be modified.

5.98. As pointed out at the beginning of this Chapter, the crux of the problem of arrears is the demand covered by certificates issued to the collectors. Out of Rs. 271.60 crores of arrears during 1958-59, Rs. 120.01 crores were represented by amounts covered by certificates forming 44.19 per cent of the total. Such arrears had increased by nearly 100 per cent since 1953-54 when they stood at Rs. 64.00 crores. The figures in Tab'e 2 appearing at pages 101-102 show that since 1954-55, such arrears have formed, on an average, nearly 41 per cent of the total arrears. A solution to the problem is, therefore, of utmost importance.

5.99. We do not propose to apportion the blame for the present state of affairs. Perhaps, the defects are inherent in the very nature of the system now in existence. We feel that the time has arrived when we should think in terms of the Central Government dealing with the entire job of collection and having a Central legislation to deal with the recovery of Central taxes as also a Central governmental machinery to administer it. *We, therefore, recommend that the recovery of the direct taxes of the Central Government under the Central Revenue Recovery Code suggested by us should be administered by the Department of the Central Government itself.*

5.100. There are bound to be difficulties in the initial stages. But these are not insurmountable. The major difficulty will be with regard to the lack of sufficient number of trained personnel. This can be met by the Central Revenue Recovery Code being got administered, in the initial stages by selected State officials who already possess the knowledge to deal with the problem. When, in course of time, the Central Government acquires sufficient trained staff, it can then take over the work of recovery completely. For building up such a cadre of trained staff, selected Central Government officials should be seconded to the various States.

5.101. The system suggested by us is likely to increase the cost of administration. But we feel that the results which would follow from a full implementation of it would justify such increase in expenditure.

The beneficial results can accrue only after a few years and it would not be prudent to expect quick results. Even at present, the Government have been meeting the expenses on the Special Officers of the State Governments attending exclusively to the collection of income-tax levied by the Central Government. Such expenses amounted to Rs. 3.72 lacs during 1956-57 and the budget estimate for 1959-60 appears at Rs. 5.57 lacs. The additional expenses are not likely to be much more than this.

5.102. It was represented to us that even under the new set up the Central agency was not likely to be as vast as the existing ones under the States and that the Central Government will still have to depend upon the States for effecting collections. Such a view arises from a misunderstanding of the intention behind the change that is being suggested. The new system is not suggested for providing help to the Central Government at the cost of the State Governments. The interests of the Centre and the States cannot be considered to be at variance with each other and co-operation between the Centre and the States should be available in this as in all other phases of administration.

5.103. To sum up, we visualise the time when the Central direct taxes administration would take over ultimately the entire work of collection under its own Central Revenue Recovery Code. For the present, the existing system of having separate certificate officers of the States to deal exclusively with collection of Central Government dues might be continued and even extended to cover areas not covered at present. This interim period, which should be as short as possible, should be utilised for getting a sufficient number of Central Government officers trained in the art and procedure of effecting collections by getting selected officers seconded to the States to work with them on deputation, as Collectors. In the meantime the Central Government should get its Revenue Recovery Code finalised. The talents and experience built up by the Central Government officers on deputation with the State Governments should then be utilised to the maximum advantage in the administration of the Central Revenue Recovery Code.

CHAPTER 6

REFUNDS

INTRODUCTORY

6.1. We have discussed in the preceding Chapter the powers and procedures relating to collection of taxes. The amount of tax collected initially from an assessee may, sometimes, be in excess of his correct tax liability, and this would necessitate refunding the excess to him. Thus, refunds may arise on account of excess deduction or taxation at source, or excess advance payments. They also arise on account of the reductions given in appeal, revision or rectification. The reliefs provided under the statute in respect of doubly taxed incomes, wealth etc., i.e. taxed in India as well as abroad, may also result in refunds. It is but fair and just that those refunds are given to the taxpayer promptly. Though this aspect has been repeatedly emphasised in the departmental instructions and some improvement had been brought about, there is still a wide-spread feeling amongst the assesseees that the Department is not as prompt in refunding the over-payments as it is in collecting the taxes. The importance of removing such a feeling cannot be over-emphasised, because it is only by conscientiously finding and refunding over payments that the Department can help to instil confidence in its sense of fairplay amongst the tax-payers. Delay or indifference in giving refunds not only have an adverse effect on the Department's relations with the public but they also make the assesseees reluctant to pay their taxes in time.

DIRECT REFUND CLAIMS.

6.2. The following statement gives the figures of disposal of refund claims made under Section 48(1) of the Income-tax Act during the period
Extent of delay 1954-55 to 1958-59:—

Table showing progress of disposal of refund claims

Particulars	1954-55	1955-56	1956-57	1957-58	1958-59
No. of claims for disposal— current plus brought forward	73,627	69,988	74,223	73,334	84,478
No. of claims disposed of	64,984 (88)	60,822 (87)	65,070 (88)	63,411 (87)	74,782 (89)
No. of claims pending	8,643 (12)	9,166 (13)	9,144 (12)	9,923 (13)	9,696 (11)

[Figures in brackets represent percentages of total claims for disposal]

It is seen that, on an average, 88 per cent. of the claims are settled within the very year of their filing. Further, an analysis of the claims pending on 31st March 1959 shows that out of the total of 9696 such claims, 6829 claims i.e. 70 per cent. were less than three months old, and only

292 claims i.e. three per cent. had been pending for more than a year. This would show that though there is considerable room for improvement, the position is not as bad as pointed out by some witnesses.

6.3. A substantial number of the refund claims resulting from excess deduction or taxation at source, such as in respect of dividends and interest on 'securities', can be conveniently segregated from the other normal assessment work, and dealt with under a special procedure at a central place. Special refund circles are already functioning at some places, and we understand from the Central Board of Revenue that instructions have been issued for the centralisation of refund claims and for the constitution of refund circles in all Commissioners' charges where the number of such claims exceeds 3,500 in a year. However, proper organisation and adequate staffing of the refund circles and a rationalisation of their methods of working are necessary for the expeditious disposal of refund claims. A system has been introduced, for the last few years, in some refund circles, e.g., at Ahmedabad and Calcutta, for disposing of the refund applications, as far as possible, on the very day of their receipt. We were informed that under this system, more than 90 per cent. of the refund applications were being disposed of on the very day of their receipt, and that the remaining cases were such where either the applicant had not produced the necessary data or prolonged investigation and detailed scrutiny was found necessary in order to establish the admissibility of the claim. Bulk of the refund claims are such as are made year after year by the same persons and which would have already been enquired into in the past. They do not require a meticulous scrutiny every year, and can, therefore, be disposed of immediately on receipt. Only cases where the claims are preferred for the first time, or the claimants are suspected to be benamidars of other persons, or where the 'income' is likely to fall within the purview of Section 16(3) of the Income-tax Act, or where investments show marked fluctuations, take time for investigation and cannot, therefore, be settled immediately. But such cases form comparatively a very small proportion of the total refund claims. *We are, therefore, of opinion that the special procedure for the disposal of the refund applications on the very day of their receipt should be extended to all the refund circles.*

6.4. We, however, wish to make it clear that, in the working of the above system, we do not envisage any undue relaxation in the standards of scrutiny of the refund claims at the cost of revenue. The Government must not be put to any substantial loss of revenue by erroneous issue of refunds or acceptance of fraudulent claims. We feel that if properly trained personnel are posted to the refund circles in sufficient numbers, it will not only achieve expedition in the disposal of refund claims but also ensure adequate scrutiny. Further, proper and intelligent use of the 'Refund Cards' which have recently been introduced by the Department and which give, at a glance, a clear picture of the refundee's previous claims, investments etc., will be very effective in detecting attempts at defrauding the revenue through bogus and erroneous claims.

6.5. It was felt by some witnesses that the system, in order to be successful, required a large establishment and might, at times, entail waste of manpower because of an uneven flow of refund applications during the year. We do not share this apprehension. There is usually a 'heavy rush' of refund applications in the earlier months of the year, and, accordingly, a larger staff would be necessary only during this period. The staff in the refund circles can

be strengthened during this period by transferring some staff from the other offices where there is comparatively less work. Thus, with suitable adjustments in staffing, there should not be any waste of manpower.

6.6. Under the existing provisions of law, tax in respect of certain incomes has to be deducted at source. Such deduction is made at the maximum prescribed rate which may, in some cases, be higher than the rate applicable to the personal income of an assessee. Such an assessee can obtain an exemption certificate from the Income-tax Officer authorising deduction of tax at a lower rate, as mentioned in the certificate, which is generally the rate applicable to the personal income of the assessee. Deduction of tax at source at such lower rate avoids excess deduction, and, thereby, obviates the need subsequently claiming any refund. This facility of exemption certificates, does not, however, appear to have been widely used by the assesseees, as otherwise there would not have arisen such a large number of refund claims. Perhaps the reason for this is that most of the assesseees are not aware of this system. We, therefore, suggest that the Department should give sufficiently wide publicity to this system and that the refund circles, in particular, should advise the refundees to obtain exemption certificates, in fit cases. The exemption certificates should be issued freely, and they should be valid for a period of at least three years.

6.7. Several witnesses urged before us that a statutory provision should be made in the tax laws for the payment of reasonable interest to the assesseees in cases of delayed refunds. Such a provision is intended to serve a two-fold purpose, firstly to bring pressure on the Department for expediting issue of refunds to the assesseees, and secondly, in cases where the Department fails to do so, to compensate the assesseees for the loss of the use of the funds legitimately belonging to them.

6.8. Similar suggestions had been made on earlier occasions also. The Income-tax Investigation Commission had recommended that the Government should pay interest at two per cent. on all direct refunds delayed beyond six months from the receipt of the refund application unless the applicant was himself mainly responsible for the delay, and on other refunds resulting from appellate and revisionary orders, if these were delayed beyond three months from the date of the order which necessitated the refund. The Taxation Enquiry Commission, however, did not express any positive opinion on this suggestion presumably because it felt that the various administrative measures suggested by it would expedite the disposal of refund claims and thereby eliminate the necessity for the grant of any interest.

6.9. We do not dispute the view that the problem of delayed refunds can best be solved through adequate administrative measures, but unfortunately the problem continues to exist in spite of such measures. The officers are at present required to dispose of direct refund claims generally within three months of the receipt of the claim, and to give refunds resulting from appellate or revisionary orders etc. normally within one month of the receipt of the order. Certain statements and returns have also been prescribed for submission to the higher authorities showing cases of refunds delayed beyond the normal periods and the higher authorities are required to enquire into the reasons for the delay and take necessary steps for obviating it. However, as has been pointed out by us earlier, there is quite a large number of refund claims which are

not settled within the period considered reasonable by the Department itself. Several suggestions of administrative nature made by us in the other paras of this Chapter will no doubt considerably help to remedy this situation, but we do feel that some special measures to make the Department dispose of refund cases quickly and to act as a wholesome check on any apathy in this matter is called for. We, therefore, suggest that the Department should pay to the assessee's interest at six per cent per annum on the amount of refunds due in respect of direct refund claims payment of which is delayed beyond six months from the date of the refund application, unless the applicant is himself mainly responsible for the delay. Interest at a similar rate should be payable in cases where the payment of the refund resulting from appellate or revisionary orders etc. is delayed beyond one month from the date of the receipt of the order concerned by the direct taxes officer. Such interest should be payable for the period for which the payment of the refund due has been delayed beyond the aforesaid time-limits. In cases of dispute between the direct taxes officer and the assessee about the payment of such interest, the decision of the Commissioner should be final. We also suggest that the interest paid by the Department to the assessee should be booked, in the financial accounts, under a separate head and checked periodically by the Inspecting Assistant Commissioners and the Commissioners.

6.10. We may point out here that the suggestion for payment of interest to the assessee is not something novel. Proviso to Section 66(7) of the Income-tax Act and corresponding provisions of the other Acts already provide for the payment of interest to the assessee on the amount of refunds becoming due as a result of the decisions of the High Courts on references. Further, under Section 18A(5) of the Income-tax Act, interest at the prescribed rate is payable to the assessee on the amount of excess advance payments made under the provisions of Section 18A of the Act, and refundable to them. Interest on refunds is also paid in several other countries, e.g. U.S.A., Canada, Japan, etc.

6.11. Much of the indifference on the part of the Income-tax officers toward quick disposal of refund applications was said to be due to the fact that comparatively little credit was given to them for disposal of refund claims. For purposes of measuring the work-load as also the output, a case of refund is at present placed in the lowest category and the Income-tax Officers have a natural inclination towards ignoring refund work and concentrating on work of higher category value. As quick disposal of refund claims is an important means for establishing good relations with the taxpayers, greater importance than at present should, in our view, be given for disposal of refund applications.

6.12. We were also told that the disposal of refund claims was, at times, delayed for want of co-operation from the assessee who did not furnish complete information and data required by the Department for establishing their claims. In order to ensure that the State Exchequer does not suffer a loss through erroneous issue of refunds, the Department has necessarily to scrutinise the claims and be satisfied that the claimants are entitled to the refund. The Department cannot obviously be blamed if the delay in settling the claim arises for want of cooperation from the claimant in the scrutiny of his claim. We suggest that, in such cases, a written intimation should be sent to the claimant warning him that the settlement of his claim for

refund is being held up on account of his noncompliance with the Department's requirements (which may be specified therein) and that no interest will be payable to him for the consequent delay in the issue of refund.

REFUNDS AND DIVIDEND TAXATION

6.13. The system of dividend taxation under the Indian Income-tax Act according to which income-tax in respect of dividends received by the shareholders of a company was deemed to have been paid by the company itself on behalf of its shareholders was found to be very complicated and largely responsible for the difficulties and delays in the settlement of claims for refunds arising out of the excess taxation of dividends at source. We had, therefore, invited, through our Questionnaire, suggestions for simplifying the present methods and procedure of taxing dividends. In the meanwhile, Government themselves have introduced certain fundamental changes in the scheme of taxation of companies and their shareholders through the provisions of the Finance Act, 1959.

6.14. Under the new scheme the legal fiction of deeming the income-tax paid by the company as having been paid by it on behalf of the shareholders and the complicated process of grossing up the dividends for determining the amount of such income-tax in the assessments of the shareholders have been abolished. Tax liability of the shareholders will not now be related to the tax borne by the companies and the dividend incomes received by them will be directly taxed in their hands. The companies are, however, required to deduct tax at prescribed flat rates from the dividends distributed and pay it to the Government. This tax will be re-imbursed to the shareholders at the time of their assessments in the same way as is done in the case of tax deducted from interest on Securities. In order to avoid inconvenience to small shareholders who are either not liable to pay any tax or the amount of tax payable by whom is less than that deducted by the companies at the prescribed rate, a provision has also been made for issuing exemption certificates to them.

6.15. By and large, the new scheme has been welcomed as a positive step towards the simplification of the system of taxation of companies and their shareholders. The Federation of Indian Chambers of Commerce and Industry has, in its Memorandum entitled "Finance Act 1959—The New Scheme of taxation of companies and treatment of dividend income—Rationalisation of taxation structure and administration", welcomed the new scheme as a "move towards simplification and rationalisation of company taxation" and according to it the new scheme "will avoid the complications involved in assessments, remove, to a large extent, the difficulties of both assessee and the Department and also save them much time and trouble". The new scheme has come in for some criticism also. It was pointed out that it would involve an increase in the incidence of taxation on the companies and their shareholders. The question of incidence of taxation is obviously outside our terms of reference. It has also been represented that, under the new scheme, the dividends paid out of the accumulations of the past profits, the dividends paid to preference shareholders and those paid in respect of inter-corporate holdings would be very adversely affected. But these are all matters connected with the incidence of taxation, and, as such, they do not fall within our terms of reference. We, however, find that an assurance has been given by the Finance Minister while replying to the debate on the Finance Bill in the Lok Sabha on 12th March, 1959 to the effect that

possible inconvenience, difficulties and imbalance that might arise in the operation of the new scheme will be set right if the circumstances warrant it. We feel that this assurance should go a long way in allaying the fears expressed.

6.16. Some witnesses expressed a feeling that the new scheme constituted little improvement over the old one because shareholders would still have to file applications for refunds in cases where the tax deducted from dividends was found to be higher than what was due from them according to the rates applicable to their personal incomes. It was also pointed out that a good many of the shareholders in the small income group might not, through ignorance, claim refund of the excess deductions of tax and would, therefore, under the new scheme, bear additional burden of taxation. We appreciate the difficulties pointed out but we feel that these can be easily resolved through administrative measures. If the companies, while distributing dividends, advise the shareholders of their right to claim refunds in respect of the excess deductions at source, and if the Department as well as the companies give sufficiently wide publicity to the procedure of obtaining exemption certificates and claiming refunds of excess deductions, we believe that the shareholders would not be put to any inconvenience. It was also represented that shareholders who might own shares in a number of companies would be required to obtain a large number of exemption certificates for depositing them with the various companies and that this would considerably inconvenience them. The number of such shareholders would not be very large, in our opinion, because shareholders who will be entitled to refunds and would require exemption certificates would be only such as whose incomes are small or who are exempt from payment of tax. Such shareholders would not generally own shares in a large number of companies. However, in order to avoid any difficulty to the shareholders, we suggest that the Department should issue the exemption certificates freely and should give as many attested copies of the certificates as required by them. It was also contended before us that the new scheme will throw additional work on the companies for deduction of tax and its payment to the Government. We, however, feel that the additional work involved will not be very appreciable.

6.17. As stated earlier, the new scheme has certain definite advantages as well. The grossing up of dividends will cease to be the complicated and cumbersome process it was under the old scheme. It will now be a very simple matter inasmuch as all that would be required to be done will be to add the amount of tax deducted from dividends to the net amount of dividends received by the shareholders. Under the old scheme it was necessary to keep the refund claims of shareholders pending till the assessment of the company was completed. This will not be necessary under the new scheme. *On careful consideration, therefore, we believe that the new scheme is sufficiently simple and easily workable. With the suggestions made by us in the preceding para, we have no doubt that the scheme will succeed in its objective of simplifying the procedure of dividend taxation.* We would also like to emphasise that it should be ensured that fraudulent claims for refund based on forged certificates regarding deduction of tax at source under the new scheme are not admitted. We would, therefore, like to suggest the following few measures:—

- (i) The certificate of deduction of tax from dividends should bear the printed signatures of the principal officer of the company paying the dividends.

- (ii) The Department should collect information regarding the companies declaring dividends in each year and, from the returns to be submitted by the assessing officers, see that all such companies are assessed to tax.
- (iii) Officers assessing the companies should check, at the time of assessment, that the taxes deducted by the companies from dividends have been duly paid to the Government.

6.18. The new scheme will, however, be operative only for the dividends declared by companies in respect of any previous year relevant to the assessment year 1960-61 and later assessment years, and the old scheme will continue to be applicable in respect of the other dividends. We understand that in order to avoid delays in the disposal of refund claims involving dividend income, instructions had been issued to the officers to gross up the dividends provisionally on the basis of either the company's certificate or the previous 'grossing factor' subject to revision later when the correct percentages of taxed funds out of which dividends have been paid become known. Such provisional grossing up, in our opinion, considerably mitigates the hardship caused, particularly to the small refundees, by the delayed issue of refunds. We, therefore, suggest that so long as grossing up is necessary, settlement of the refund claims involving dividend income should not be kept pending for want of the relevant correct 'grossing factor' and that the claims should be disposed of provisionally on the basis of either the latest 'grossing factor' previously adopted for the company concerned, or the 'grossing factor' that may be ascertained from the company's certificate, whichever is more appropriate in the circumstances of each case. A record of the claims where dividends have been so provisionally grossed up should be maintained and if on receipt of the particulars regarding the relevant 'grossing factor' it is found that excess or short refund has been given, the refund order may be rectified under Section 35 of the Income-tax Act.

OTHER REFUNDS

6.19. There were also frequent complaints of delay in giving refunds resulting from reduction in the amount of taxes on appeal, reference, rectification or revision. The officers were said to be generally indifferent in giving immediate effect to the appellate decisions etc. appellate orders etc. and issuing the refunds due to the assesseees. This tendency was reported to be more pronounced in the latter part of the financial year when the payment of refunds was said to be generally withheld in order to achieve, or even exceed, the 'collection targets'. In the absence of relevant statistics, we are unable to assess the extent or justification of these complaints. We, however, understand that the Central Board of Revenue has already taken administrative measures to correct such tendencies, if any, and to ensure that such refunds are normally issued within a month of the receipt of the orders concerned. We feel that such measures coupled with our recommendation that interest at six per cent should be paid in cases of delays beyond one month will solve this problem.

6.20. Complaints were also made to us that in cases where the taxes paid by the assesseees in advance under Section 18A of the Income-tax Act were in excess of the amount of taxes due on the returns of income filed by them, their assessments were not finalised quickly and the refund of excess payments to them was usually very much delayed. An intelligent use by the assesseees

of the provisions of Section 18A(2) of the Income-tax Act will, no doubt, considerably minimise cases of such excess payments, but the best remedy is expeditious finalisation of assessments in such cases as has also been, emphasised by us in the Chapter on Assessments-Procedures. *However, if the assessment is not finalised within three months of the filing of return of income, provisional refund of the excess payment should be given to the assessee concerned in the same way as provisional assessment is made under Section 23B of the Income-tax Act for collecting the tax payable, or, alternatively, the Department should pay interest at six per cent on the amount refundable from the date of the filing of the return to the date of the issue of the refund order. Sections 18A(5) and 23B of the Income-tax Act should be amended accordingly.*

6.21. It was also pointed out to us that great inconvenience was caused to the assessee not only by the delay in refunding excess advance payments but also by the insistence on payment of other tax demands without taking into account the excess advance payments refundable. It was, therefore, suggested to us that the assessee should have the option to adjust such excess advance payment against other tax demands. We believe that the suggestions made by us in the preceding para will considerably mitigate the grievances of the assessee. *However, we see no objection in allowing the assessee to seek adjustment of the refunds due to them on account of excess advance payments against other tax demands in cases where the Income-tax Officers have failed either to finalise the assessments within three months or give provisional refunds. Wherever the assessee desire such adjustments, the Income-tax officers should not enforce collection of the other tax demands, equal to the amount of the excess advance payment refundable to the assessee, until regular assessments are made when the amount of the excess advance payment refundable to the assessee will be determined and final regular adjustment made in the accounts. In cases where the assessee have availed themselves of this facility, they will have no claim for payment of interest from the date the desired adjustment is made.*

DOUBLE TAXATION RELIEF

6.22. Our attention was also invited to the difficulties experienced by the assessee in obtaining refunds resulting from double taxation reliefs. The difficulties are mainly in respect of the time limit for filing claims and the time taken in their settlement.

6.23. Under Section 50 of the Income-tax Act and also in terms of the double taxation relief agreements with other countries, claims for relief have to be filed within a period of four years from the end of the financial year commencing next after the expiry of the relevant 'previous year'. This period coincides with the general time-limit of four years prescribed for the finalisation of assessments and is even short of the time available for completion of certain assessments proceedings which are initiated under Section 34 of the Act. In cases where assessments are finalised almost at the close of the limitation period the assessee are left with little time for filing claims for double taxation relief within the prescribed time. Further, even if the assessment is made in India before the expiry of the four years' time-limit for filing the claim, assessment in the other country may not be so completed. Thus an assessee may not be able to determine the quantum of his income which has been taxed in India as well as in the foreign country and the extent of the relief admissible to him in respect of such income, before

the time-limit for filing the claim expires. The Department has sought to solve these difficulties by allowing the assesseees to file provisional claims within the prescribed time-limit to be supplemented later after the assessments are finalised. In consideration of the practical difficulties commonly experienced by the assesseees in filing the claims within the time-limit as at present prescribed, we agree with the Income-tax Investigation Commission that "it is desirable to amend the law itself rather than to supply palliatives by means of Departmental circulars, which, in some measures, leave discretion to the Departmental officers even in cases of recognised hardship".* We, therefore, suggest that in cases where the claim for double taxation relief cannot be filed within four years from the expiry of the relevant assessment year on account of non-completion of the assessment whether in India or in the foreign country within such time, the claim may be allowed to be made within one year from the date of assessment either in India or in the foreign country, whichever is later. We also feel that in cases where the claims are filed beyond the permissible time-limits and are thus technically time-barred, the Commissioners of Income-tax should, in deserving cases, condone the delay or extend the time for filing the claims where circumstances warrant such condonation or extension.

6.24. It was brought to our notice that several difficulties were being experienced by assesseees in obtaining certificates of assessments from the taxation authorities in certain foreign countries, notably Pakistan and Portuguese East Africa, with the result that the assesseees were not able to file their claims for double taxation relief within the prescribed time and establish their admissibility. We feel that the suggestion made by us in the preceding paragraph to authorise the Commissioners to extend the time for the filing of the claims in deserving cases, would mitigate these hardships as well.

6.25. We now consider the grievance made out with regard to delays in the disposal of these claims. There were 1275 claims for double income-tax relief pending for disposal on 31st March, 1959, of which 21·5 per cent. were less than one year old, another 21·5 per cent more than one year but less than two years old and the remaining 57 per cent had been pending for more than two years. The amount of refund involved in these claims was rupees 889 lakhs, and the claims pending for more than one year accounted for rupees 733 lakhs, i.e. more than 82 per cent of the total. This is a very unsatisfactory position and special efforts are necessary to see that the pending claims are disposed of expeditiously.

6.26. With a view to avoiding hardship to the assesseees in first paying the taxes fully and then claiming refunds for double taxation relief, collection of the tax equal to the amount of estimated double income-tax relief is now, as a general rule, kept in abeyance until the claim is finally settled. Such taxes amounted to rupees 11 crores at the end of 1958-59. It is, however, relieving to note that the amount of such taxes has been steadily falling since 1953-54 when these had amounted to rupees 21 crores, as a result of the various administrative measures taken by the Department to settle these claims. We desire that more intensive efforts should be made by the Department in this direction.

6.27. The main reasons for the delay in the settlement of these claims are non-completion of the relevant assessments in the foreign country concerned and non-availability of the certificates of foreign assessments with the result that the amount of relief due to the assessee cannot be determined. These factors hamper, to a larger extent, the efforts of the Department to settle the claims quickly. *The assessee should, therefore, themselves make efforts to get their foreign assessments completed quickly, and the mere fact that the collection of the taxes equal to the probable amount of the relief is kept in abeyance should not lull them to complacency. Attempts should also be made to resolve these difficulties in consultation with the foreign governments, wherever possible.*

6.28. In order to avoid the necessity for claiming refunds of double taxation relief and the hardships attendant thereto, more and more countries are concluding bilateral agreements for avoidance of double taxation. The Government of India have also entered into such agreements for avoiding double income-tax with a number of countries such as Pakistan, Ceylon, Sweden, U.S.A., Japan, and for the purposes of avoiding double Estate Duty taxation, with U.K. Negotiations for concluding similar agreements with several other countries like, United Kingdom, West Germany, are in an advanced stage. *It has been urged before us that the Government should conclude such agreements with as many countries as possible. We fully endorse this desire.*

6.29. Certain difficulties have, however, been pointed out to us in respect of the implementation of these agreements. It was brought to our notice that the "two-man" Committee constituted to arbitrate in cases of disagreement between India and Pakistan regarding the allocation of the income chargeable to tax in either country had not been functioning satisfactorily with the result that many cases were pending for decision. *The Government should, in our view, take special steps to ensure that the "two-man" committee meets regularly and decides cases of disagreement.*

6.30. Another difficulty brought to our notice was in respect of the time for which the collection of tax demand equal to the estimated amount of abatement available under the provisions of the agreements was kept in abeyance pending the production of the certificate of assessment from the foreign country. Where the total income assessed and the rate of tax levied in the foreign country are not known so as to enable the determination of the amount of abatement admissible in the Indian assessment, the collection of the tax equal to the estimated abatement is kept in abeyance for a period of one year within which the assessee should produce the certificate of assessment in the foreign country. This period can be extended by the Income-tax officer at his discretion in the circumstances of each case. The right to abatement is extinguished, if the certificate of assessment is not produced within the time allowed. It has been represented that the period of one year is too short and a mere discretion to the Income-tax Officers to extend the time does not afford a sufficient safeguard for the assessee whose assessments are usually delayed in the foreign countries or who, for no fault of theirs, are unable to secure the certificates of assessments from the foreign countries. *We have already referred in para 6.24 to the difficulties caused to the assessee on account of the non-cooperation of the authorities in certain foreign countries. Collection of rupees 54 lakhs of income-tax, which represents the estimated abatement admissible to the assessee, had been*

kept in abeyance at the end of 1958-59 in 153 cases for more than two years for want of production of certificates of assessment from the foreign countries, chiefly Pakistan and Portuguese East Africa. Figures showing the number of assesseees and the amount of abatement lost to them because of non-production of the certificates of assessment in time are not available to us. *In order to meet the legitimate difficulties of the assesseees, we suggest that either a provision should be made to statutorily extend the time-limit of one year for production of the certificate of foreign assessment or the Government should make some other suitable provisions to safeguard the interest and rights of the assesseees.*

PAYMENT OF REFUNDS

6.31. Taxes refundable to the assesseees are generally paid back to them through Refund Order which can be encashed either at a Treasury or a branch of the Reserve/State Bank of India, as may be specified in it. Complaints were made to us about delays in the issue of Refund Orders even after the assesseees' claims to refund had been settled and orders determining the amount of refund had been passed. We do not see any reason why the Refund Order should not be issued immediately after a claim to refund has been settled. It was also brought to our notice that in a number of cases difficulty had been experienced in the encashing of Refund Orders on account of various defects in their writing, such as:

- (i) over-writings and corrections were not attested with full signatures of the Income-tax Officer;
- (ii) the amount of refund as given in letters did not agree with that given in figures;
- (iii) the branch of the Reserve/State Bank of India or the Treasury was not correctly indicated;
- (iv) the name of the payee was not correctly given, and so on.

The Bank or the Treasury refuses to make payment on such defective Refund Orders. Besides, the advice notes which contain an intimation about the issue of Refund Orders, are understood to have not always reached the Bank or the Treasury before the Refund Orders are presented for encashment, although the Income-tax Officers are required to send the advice notes simultaneously with the issue of the Refund Orders. The result is that the assesseees have to wait for encashment until the advice notes reach the Bank or the Treasury.

6.32. The various lapses referred to above only indicate carelessness and indifference on the part of the officers. Though these appear to be ordinary and trifling mistakes, these have a very adverse effect on public relations. *We, therefore, desire that strict instructions should be issued to all officers to avoid such lapses.*

6.33. One suggestion made to us was that the refunds should be issued in the form of treasury cheques and thus do away with the issue of advice notes. Advice notes are a very effective check against attempts at fraudulently obtaining payments for Refund Orders from the Bank or the Treasury. For reasons of security of government funds, we are not inclined to accept this suggestion. *However, in order to avoid hardship to the assesseees, we suggest that the currency of the Refund Orders should be the same as for treasury cheques, i.e. three months instead of one month, which obtains at present.*

6.34. It was also brought to our notice that several assesseees, particularly those who had small income or who did not have any bank account, found it difficult to encash the Refund Orders from the Treasury or the Bank. It was, therefore, suggested to us that the refunds should be paid to such persons in cash or by postal money order. We understand that refunds can even now be sent by money order at government expense, if the refundee finds it convenient. This facility, however, does not appear to be widely known to the public. We have suggested in the Chapter on Collection and Recovery the opening of cash counters in the tax offices to facilitate the payment of tax dues by small income assesseees. These cash counters can also be utilised for giving refunds of small amount in cash. *We, therefore, suggest that when a refundee makes a request for the payment of the refund to him in cash, it should be paid to him either in cash at the cash counter or remitted to him by postal money order, provided that the amount of refund does not exceed Rs. 250/-.*

6.35. Refunds due to the estate of a deceased person present a special difficulty in that their payment is withheld until certificate of succession or letters of administration etc. is produced by the legal heirs. It usually takes a considerable time and also involves quite a bit of expense for obtaining the succession certificate or letters of administration. Moreover, in some cases immediate payment of the refunds to the legal heirs may be of considerable financial help. *We are therefore, of opinion that when there is no dispute amongst the legal heirs, the refund due to the estate of a deceased should be paid to his son/widow or other legal heirs on their furnishing an indemnity bond and without requiring the production of succession certificates or letters of administration etc.*

CHAPTER 7

EVASION AND AVOIDANCE

INTRODUCTORY

Under our terms of reference, one of the main objectives required to be kept in view is the elimination of tax evasion. Although our recommendations in the other Chapters have been made keeping this objective in view, we shall, in this Chapter, discuss the problem of tax evasion and avoidance in all its aspects and suggest specific measures for checking them.

7.2. *Tax evasion and tax avoidance are neither new nor peculiar to India. They constitute a problem which is prevalent in almost all countries.* As early as 1920, the Royal Commission on the Income Tax in the United Kingdom drew attention to the existence of tax evasion in that country and expressed its views on it as under:

"That evasion of income-tax exists at the present time is beyond question. The citizen who is deficient in public spirit has always aimed at paying less than his fair share of the nation's expenses, and it is safe to assume that he will always continue to do so. This may be said of every tax, but it is especially true of the income-tax....."*

The position in the United States of America also appears to be the same. In 1936, it was found that efforts at avoidance and evasion were widespread and amazing, both in their boldness and in their ingenuity. A Joint Committee on Tax Evasion and Avoidance was, therefore, appointed to investigate the methods of evasion and avoidance of income, estate and gift taxes, and recommend remedies for the evils. In this connection, the following extract from a later publication dealing with this problem will be of interest:

"the list of those successfully prosecuted represents a wide variety of economic pursuits. Perusal by the author of the cases considered for prosecution during one monthly period indicated that the taxpayers had been engaged in such diverse occupations as yarn dyeing and bleaching, architecture, optics, steel casting, hardware, cotton planting, retail coal, retail clothing, manufacture of dog food, highway construction and tattooing. Although this list did not contain any professional men, nevertheless they are well represented in the roster of tax evaders. This is particularly true of doctors; there have also been cases involving dentists, accountants and some lawyers. Many defendants have been individuals of outstanding reputation in their respective fields; some have been civic figures. Tragically enough, for the overwhelming

*Report of the U. K. Royal Commission on Income-tax (1920) Para 625, page 135.

majority, the tax violation has been the first blemish on otherwise unstained careers.”*

The situation in France is not different. In fact there is a widespread impression that tax evasion is higher in France than in most others. In the year 1951, tax evasion in France was reported to be near about 600 billion francs.** Similar conditions exist in other countries also.

7.3. A distinction is generally made between “avoidance” and “evasion” of tax. The term tax avoidance is taken to refer to arrangements by which a person, acting within the letter of the law, reduces his true tax liability, infringing, in the process, both the spirit and the intent of the law. Courts of law have upheld the right of a taxpayer to secure reduction in his liability by making use of the loopholes in the law and tax avoidance, therefore, has acquired legal sanction and is not regarded as disresponsible. Evasion, on the other hand, denotes downright defrauding of revenue through illegal acts and deliberate suppression or falsification of the facts relating to one’s true tax liability. *Whatever be the method an assessee adopts—whether it be avoidance or evasion—the consequence of his action is the same, viz., loss of revenue to the State and an increase protanto in the burden of tax on the other tax payers who do not resort to such practices.* In this context, we cannot do better than quote the following observations made by President Roosevelt in his message to the U.S. Congress in 1937:

“Methods of escape or intended escape from tax liability are many. Some are instances of avoidance which appear to have the color of legality; others are on the border line of legality; others are plainly contrary even to the letter of law. All are alike in that they are definitely contrary to the spirit of the law. All are alike in that they represent a determined effort on the part of those who use them to dodge the payment of taxes which Congress based on ability to pay. All are alike in that failure to pay results in shifting the tax load to the shoulders of others less able to pay, and in mulcting the Treasury of the Government’s just due.”†

7.4. The methods that could be adopted for combating avoidance are different from those required for eliminating evasion. Avoidance could be checked only by plugging the loopholes in the law and by a careful drafting of all new legislation. Evasion, on the other hand, has to be fought by making the enforcement machinery stronger and stricter in its administration and by the levy of deterrent punishment whenever a tax-evader is caught. It is quite likely that, in the process of tracking down cases of evasion, some inconvenience is caused to the assessee but it is inevitable under the circumstances. While the dishonest should not be allowed to escape, the Department should, at the same time, so conduct itself as not to create an impression in the minds of honest assesseees that their words are not believed and that they are subjected to needless harassment.

* Current Issues in Federal Taxation—The American University Tax Institute Lectures (1948), Vol. I, Page 269.

** The French Economy and the State (1958) by Warren C. Baum, Page 143.

† Hearings before the Joint Committee on Tax Evasion and Avoidance (1937)—page 2.

7.5. By the very nature of things, it is difficult to ascertain accurately the extent of tax evasion. In no country has it been possible to do so and the difficulties involved in the process have been acknowledged by the various enquiry bodies, both in India and abroad. The Royal Commission of 1920 in the United Kingdom, as well as the Income-tax Investigation Commission (1947) and the Taxation Enquiry Commission (1953-54) in India have pointed out the difficulties in making a correct estimate of its magnitude. In 1956, Prof. Kaldor attempted to make an estimate of the extent of evasion in this country on the basis of certain tentative figures relating to national income supplied to him by the Central Statistical Organisation. According to him, the amount of income-tax lost through evasion amounted to between Rs. 200 crores and Rs. 300 crores for the assessment year 1953-54. As against this, the Central Board of Revenue was of the opinion that the tax evaded in that year would not have exceeded Rs. 20 crores to Rs. 30 crores. We may at the outset mention that, while tendering oral evidence before us, Prof. Kaldor stated that the estimate made by him represented the loss of tax not only through evasion but also through avoidance. This makes a good deal of difference as according to Prof. Kaldor, many of the expenses which are now allowed under the statute in the assessment of business income should not be allowed and he considers them all as coming under avoidance. It is also to be noted that the concept of "income" in the national income statistics is much wider than that under the Income-tax Act. Besides, Prof. Kaldor himself had made it clear in his report that his figures were merely tentative and should be interpreted with great caution. On an analysis of the final figures of national income and the census of Indian manufactures, which are since available, we find that both the quantum of income estimated and the rates of tax adopted by him were very much on the high side. *We are, therefore, of the opinion that the quantum of tax evasion, though undoubtedly high, is not of the magnitude indicated by Prof. Kaldor in his report.*

7.6. While the difficulties inherent in any attempt at estimating the extent of evasion should be obvious from the above, it cannot be denied that evasion has been in existence in this country for a long time and is prevalent at all levels of income. The Income-tax Investigation Commission had, in the 1,058 cases investigated by it, detected concealed income of the order of Rs. 48 crores. The tax and penalty levied in respect of this evaded income amounted to Rs. 29.42 crores. Concealed income amounting to Rs. 70 crores was disclosed by the assessee themselves under the Voluntary Disclosure Scheme of 1951 in 20,912 cases, and additional tax and penalty amounting to nearly rupees 11 crores was demanded on this score. Besides, considerable amount of escaped income is brought to tax, every year, by the efforts of the Department under the provisions of Section 34 of the Income-tax Act. During 1958-59, concealed income amounting to Rs. 31.10 crores was assessed in 27,343 cases resulting in additional tax and penalty of Rs. 15.64 crores under Sections 34(1) (a) and (b) of the Act. These figures clearly indicate the magnitude of the problem of tax evasion.

7.7. Though evasion of tax is common to all classes of citizens irrespective of the income group to which they belong, opportunities for it vary according to the nature of income earned by them. For instance, in the case of salaries and interest on Securities, evasion is most unlikely because the tax gets deducted at the very source, before the income reaches the taxpayer's pockets. On the other hand, opportunities for evasion are largest when the income is derived from business, profession or vocation.

CAUSES OF EVASION

7.8. It was stated by many witnesses that the prevailing high rates of taxation were one of the main causes for tax evasion.

High rates of tax The high rates of tax in the top income brackets are said to be tolerated only because of the considerable evasion that takes place. *While we cannot deny that the higher the rate of tax, the greater will be the temptation for evasion and avoidance, we feel that the tax rates by themselves are not to blame for the large extent of evasion in the country.* Even if the rates of tax are reduced, evasion will still continue, because it exists at all levels of income. The evidence before us shows that tax evasion has never been the prerogative of the higher income groups but, as the stakes involved are larger in their cases, the tendency to avoid or evade tax is also greater.

7.9. *The complicated provisions of the direct taxes Acts, not all of which are easily intelligible, were also stated to be responsible, to some extent, for tax avoidance and evasion.* The average taxpayer has inevitably to seek the assistance of tax experts and their advice is not always disinterested. In fact it has been represented that some tax representatives aid and abet tax evasion. The measures to be taken to combat this problem are discussed later in this Chapter. The role of tax representatives and the ethics to be adopted by them are being discussed in the Chapter on Administration.

7.10. *The inadequacy of the powers vested in the personnel of the Department was another reason pointed out as a cause for tax evasion.* The facts relating to income, wealth, expenditure, etc., are known only to the taxpayer and, if he does not disclose all of them to the assessing officer, the task of the latter in determining the correct tax liability becomes very difficult. In cases where the taxpayer himself does not bring to light all the material facts, the assessing officers have to depend upon the powers given to them under the law for securing the information which they consider relevant. In this, the assessing officer is often fighting an unequal battle and some strengthening of his hands is necessary ensuring at the same time, that the powers vested in him are not exercised capriciously and that no harassment is caused to the honest taxpayer.

7.11. Another reason for evasion pointed out to us was the dearth of experienced personnel in the Department. In our opinion, the present strength of fully trained and experienced officers in the Department is not adequate even for dealing with the current cases. Many of the experienced assessing officers have been promoted as Assistant Commissioners and this has depleted the strength of officers with the requisite experience for assessment work. In addition, there is a large backlog of arrears, which, because of the considerable time-lag, present even more difficulties than current cases. This time-lag is often utilised by unscrupulous tax-payers to manipulate their accounts, to destroy existing evidence or to fabricate new evidence—in short, to distort the true position regarding their tax liability. In quite a few cases, the assets are alienated or frittered away during the interval between the earning of the income and its assessment, and even if ultimately a demand is raised, its collection is rendered very difficult. From this, it seems to us that it will not be an exaggeration to say that the time-lag in completing the assessments is itself one of the causes for evasion. *It is, therefore, necessary to have in*

the Department sufficient numbers of trained and experienced personnel to cope with the current as well as arrear load of assessment and investigation work. Simultaneously the organisation and procedures of the Department should be so improved as to bring it to the highest pitch of efficiency.

7.12. One important reason for the prevalence of evasion is stated to be that in actual practice no deterrent punishment like imprisonment is being meted out to tax evaders when they are caught. Though the direct taxes Acts provide for prosecution and imprisonment in cases of concealment and false statements in declarations, the Department has not, during the last 10 years, got even a single person convicted for evasion. It is seen that prior to 1939, prosecutions were being freely resorted to in suitable cases. *We feel that unless it is brought home to the potential tax evader that attempts at concealment will not only not pay but also actually land him in jail, there could be no effective check against evasion.* At present, a tax evader even if caught, has only to pay the tax sought to be evaded and a percentage thereof as penalty. Though the maximum penalty leviable is 150 percent of the tax sought to be evaded, such a high penalty is rarely levied. Even the moderate penalties levied by the assessing officers are reduced to nominal sums by appellate authorities. *Both these factors, the non-resort to prosecution and the non-levy of deterrent penalties have, no doubt, encouraged the growth of evasion.*

7.13. Another reason for widespread evasion is said to be the secrecy provisions of the direct taxes Acts. At present, the Department is statutorily prohibited from disclosing any information relating to a person's return or assessment, excepting to specified authorities like Central and State Government authorities, Courts of Law and Reserve Bank for the limited purposes mentioned in the Acts themselves. Thus, even if a tax evader is caught and penalised for concealment, he can keep it as a secret from every one and thereby escape the odium. *The pressure of public opinion is a major deterrent against any offence and, in our opinion, if the secrecy provisions are relaxed even to a limited extent, they will go a long way towards checking tax evasion.*

7.14. Yet another reason which we consider is of considerable importance in the case of retail trade is that, in an attempt to evade sales tax, the total sale figures are often considerably understated. Generally speaking, the income-tax payable in such cases is much less than the sales tax payable and their attempts are intended primarily to evade sales tax by not recording the correct sales and avoiding issue of cash memos. The purchasers also do not insist on the issue of cash memos, as they do not have to pay the sales tax and hence get the goods at a lower price. *By suppressing sales, a trader not only defrauds the State Government of the sales tax due to it but also the Central and the State Governments of their share of income-tax.* Another result of this practice is that it makes it difficult for the honest trader to continue in business.

7.15. Certain moral and psychological factors have also been pointed out as responsible for tax evasion in the country. Unfortunately, all citizens do not realise their duties to the State and the necessity of paying the correct amount of taxes and paying them in time. *Only a reformed moral outlook and the development of better civic conscience can improve matters in this respect.*

7.16. We also feel that the Department is no less responsible for the present state of affairs. It has been said, and not unjustifiably, that even when the assessee returns correct income, wealth, etc. and produce evidence in support, the assessing officers do not always accept them. Because of this attitude of the Department, it is said that assessee, sometimes, understate their income, wealth, etc. in returns. *This mutual distrust creates a vicious circle which has got to be broken, and it should be broken by the Department. For this purpose, the Administration has to take the initiative and trust the assessee and conduct itself with a high sense of justice and fairplay.* If it does so, we believe, the present hostility of the tax paying public will largely disappear and that it will give place to a growing sense of mutual trust and co-operation between the Department and the assessee.

7.17. Lastly, it has been stated that lack of requisite integrity in some of the officers of the Department is partly responsible for tax evasion. We cannot over-emphasise the necessity for the officials of the Department maintaining the highest standards of honesty and rectitude. In the Chapter on Administration we have commented on this matter in some detail. *Here we would only stress that not only should the departmental officials be honest but they must also be above suspicion and that they should so conduct themselves in their private as well as official life that no wrong motives could be attributed to any of their actions.*

METHODS OF ENQUIRY AND INVESTIGATION

7.18. In the preceding paragraphs, we have considered the extent of evasion and avoidance and the various factors responsible for them. We shall now proceed to examine the adequacy of the present methods of investigation and the agencies of the Department employed in checking evasion as well as the changes required to be made.

7.19. In addition to the information received from assessee and others in accordance with the statutory provisions of the direct taxes Acts, a variety of information is collected by the Department through 'external survey' as well as 'internal survey'. The former consists of door to door survey of cities and towns and even large villages by the Inspectors of the Department at periodical intervals, usually once in three years. Information is also gathered by the Department from the records of the municipalities and corporations regarding the construction of new properties, from the registration offices in respect of transfers of properties and from other Government offices such as sales tax, customs, excise, railways etc. regarding the commercial transactions of various kinds. From the statistics supplied to us, we find that, as a result of external survey in the last two years, about 50,000 to 60,000 new assessee have been brought on the income-tax registers each year but they are mostly in the small income group and the total annual demand raised in those cases is only of the order of Rs. 50 lakhs. However, considering the recent lowering of the minimum taxable limit to Rs. 3,000 and the large scale development of the country's economy, we feel that the number of new assessee brought in as well as the additional revenue raised is far from adequate. Many witnesses, official as well as non-official, have also expressed the view that large number of persons who have got assessable incomes have still not been brought on the income-tax registers. *We are of the opinion that more importance should be given to this work by reorganising the Survey Circles and augmenting the staff in them. With a view to secur-*

ing that surveys are conducted on a regular and systematic basis, we recommend that Special Survey Circles should be constituted in all important cities. Each of these units should be headed by a Survey Officer (Income-tax Officer) and manned by an adequate number of Inspectors and the necessary clerical staff. In larger cities like Bombay, Calcutta, Madras and Delhi, an Inspecting Assistant Commissioner should be placed exclusively in charge of survey work. In other areas the territorial assessing officers should be made responsible for the survey work.

7.20. Steps should be simultaneously taken for improving the quality of work done by the Inspectors employed on survey work. The estimates of income made by them are often stated to be exaggerated and unreal. We also understand that the Income-tax Officers are not exercising a proper check and control over the survey done. It should be the duty of the officers in charge of survey units to test-check the survey reports submitted by the Inspectors and for this purpose they should themselves visit the business localities surveyed. The Assistant Commissioners in charge of survey should also conduct a similar test-check on the work of the Inspectors and the officers and see that not only do persons with assessable incomes not escape but also that no exaggerated estimates are made by the Inspectors and no inconvenience is caused to the public in the course of survey. The results of survey should be reviewed by the Commissioners every month and also by the Central Board of Revenue.

7.21. Apart from the bringing in of new assesseees, external survey also gives information regarding the existing assesseees. It should be the responsibility of the Inspecting Assistant Commissioners of the various ranges to see, during the course of inspection, that the information collected during survey is properly utilised by the assessing officers. In this connection, we would draw attention to the large scale construction of house properties and buildings that is taking place in almost all the urban areas. It should be seen that the information now being collected by the Department is passed on in time to the concerned assessing officers who must make full enquiries regarding the source of moneys spent in the construction of these properties as well as the rental incomes realised from them. It is well known that because of the acute housing shortage in most cities, rentals much higher than the standard or controlled rents are being realised. Enquiries on this point should also be made by the Inspectors in the course of external survey. We also suggest that Survey Inspectors should make full use of the information contained in the electoral rolls.

7.22. The internal survey refers to the system of cross-verification by which the assessing officers verify transactions recorded in an assessee's books with reference to those recorded in the books of another party or with the information available with the Department. While examining the returns and accounts of any of the taxpayers, the assessing officer abstracts particulars of the more important transactions of the assessee, such as, purchases and sales over certain amounts, payments to the contractors, payments of interest and commission, loans etc. These particulars are then communicated to the officer assessing the person with whom these transactions are entered into in order to see if they have been duly accounted for. This enables the Department to detect persons who are not assessed or those who keep transactions outside their account books or make erroneous entries regarding them. Due to the large volume of the work involved, this work is stated to be generally in arrears and not given the importance it deserves. As shortage of staff is stated to be the main

Internal Survey

cause for the neglect of this work, we are, in the Chapter on Administration, suggesting the strengthening of staff, wherever necessary. *Inspecting Officers as well as the Commissioners should see by periodical tests, that this work is not neglected and does not fall in arrears.*

7.23. The regional agency for collection, collation and distribution of information is the Special Investigation Branches functioning at the Commissioner's Headquarters. These Branches collect information from a variety of sources, official as well as non-official, such as particulars of import and export licences, customs clearances, foreign remittances, seizures of smuggled goods, supply orders placed by Government and quasi-Government departments, bulk consignments of goods from railway stations, excise licenses, new firms registered, new companies floated etc. While we are satisfied that these Branches are doing useful work, we feel that they should be strengthened further. *They should be re-organised and placed under the charge of Assistant Commissioners in Bombay and Calcutta and under senior Income-tax Officers in other charges.* The work of these Branches in the various Commissioners' charges will be co-ordinated by the Directorate of Investigation and Intelligence, the setting up of which we are suggesting in the chapter on Administration. These Branches will distribute to the various assessing Officers information collected by the Directorate with regard to market intelligence, price fluctuations etc. The officers incharge of these Branches should also serve as a liaison-officer between the Income-tax Department and other concerned Departments or Organisations such as Sales tax, Customs, Excise, Reserve Bank. It will be one of their duties to see that the officers receiving information from these Branches make the verifications in time before the assessments are completed.

7.24. The Collation Branch was established in 1944 for the purpose of collecting information from the various departments of the Central and State Governments about payments made to contractors, etc. and intimating details of the same to the assessing officers. It also collects information about dividends above specified limits paid by various companies and passes it on to the concerned officers assessing the shareholders. Under departmental instructions, the assessing officers are required to send back to the Branch the tear-off acknowledgment portion of the Intimation Slips mentioning therein the General Index Register number and the Ward, District or Circle where the payees are assessed and also certifying that the Intimation Slips have been placed on the records of the assessee concerned. As an administrative check of this arrangement, five per cent of the Intimation Slips are selected and sent to the Inspecting Assistant Commissioners for test-check at the time of inspection of the Income-tax Offices and they are required to verify that proper use had been made of the Intimation Slips received.

7.25. Though the work being done by this Branch is useful, considerable improvements in its working are necessary. In particular, it should be seen that the information collated is communicated to the assessing officers before they finalise the assessments. The primary reason for the delay is that in the absence of any legal sanction, the Branch cannot, as a matter of right, call for the information from the various Government departments and organisations but has primarily to depend on their goodwill. The Collation Branch is helpless if, for any reason, a Government department or organisation fails to furnish the information. *We, therefore, suggest that rules may be framed casting an obligation on the*

Government departments and quasi Government bodies to communicate information to the Collation Branch of the Department. In view of the reorganisation of the Directorates which we are suggesting, we recommend that this Branch should be placed under the control of the Director of Investigation and Intelligence. For ensuring better supervision and control, it should be placed directly under a Deputy Director of Inspection instead of an Assistant Director as at present. We also understand that the system of communicating information and varification is not functioning very satisfactorily, because in many cases the tear off acknowledgement portion of the Intimation Slips have not been returned by the assessing officers to the Collation Branch owing to pressure of other work. The situation has to be remedied. It should be the responsibility of the Inspecting Assistant Commissioners to see that the information received from the Collation Branch is utilised properly by the assessing officers.

7.26. In the Chapter on Assessments—Procedures, we have emphasised the desirability of concentrating cases requiring detailed investigation in Special Circles under the charge of experienced and competent officers. There are at present 28 Special Circles in the various Commissioners' charges and these should continue. *Further Special Circles may also be created, as and when necessary.* We, however, wish to suggest certain improvements with regard to their functioning and control. These Special Circles are at present under the direct control of the Director of Inspection (Investigation) so far as the technical work of making investigations and assessments is concerned but for all other matters including recovery of tax, filing of appeals and references, they are under the control of the territorial Commissioners of Income-tax. It was pointed out that this duality of control over these Circles militated against their efficient functioning. Considerable dissatisfaction was expressed before us, both by the assesseees and by the Departmental Officers, even in regard to the technical control at present exercised by the Directorate over these Circles, as such control was rather remote and mainly through correspondence. *We suggest that in order to make for better guidance on the spot, greater utilisation of local knowledge and more expeditious disposal of work, the territorial Commissioners of Income-tax should be made responsible also for the control of the technical work including investigation and assessment, done in these Circles.* The assistance of the Officers of the Directorate should still be available, if investigations are required in cases of concerns having branches or connections all over the country or in those which present peculiar difficulties.

7.27. The two Central Commissioners' charges at Bombay and Calcutta were created in 1939 and 1941 respectively with the object of undertaking detailed investigations in cases of big assesseees having large business activities all over the country since the ordinary territorial officers could neither have the time nor the specialised training necessary for the intensive investigation required in such complicated cases. The assessing Officers in these charges have no territorial jurisdiction but have jurisdiction over the cases specially assigned to them by the Board under Section 5(7A) of the Income-tax Act. The assessment work in these charges is done under the close and continuous supervision of the Inspecting Assistant Commissioner and the Commissioner. *These charges have proved quite effective in handling cases of tax evasion and we feel that they should continue. The arrear cases in these charges are however very large and as large amounts of revenue are involved, greater emphasis should be laid on bringing the assessments uptodate. If*

necessary, additional officers should be posted for this purpose. We also suggest that as soon as the investigations for the relevant period are completed and the assessments brought upto date, such cases should be re-transferred from the "Central" to the territorial charges and fresh cases requiring investigation taken over by the "Central".

7.28. Following the recommendations of the Income-tax Investigation Commission, the Directorate of Inspection (Investigation) was created in 1952 for undertaking and co-ordinating investigations in difficult and complicated cases of tax evasion. As also mentioned earlier, the main part of the Directorate's work at present consists in the technical supervision and control of the 28 Special Circles spread all over the country. The Directorate also gives technical advice and guidance regarding the methods of examination of accounts in special types of cases and co-ordinates the investigation work in the various Commissioners' charges. In addition, it functions as the Vigilance Wing of the Central Board of Revenue for checking corruption and other mal-practices among the departmental personnel.

7.29. We have already suggested in para 7.26 that the territorial Commissioners should themselves be responsible for the technical work of making investigations and assessments in the Special Circles. Further, in view of the importance of vigilance work in the Department, we are recommending, in the Chapter on Administration, the constitution of a separate Directorate of Vigilance to be exclusively in charge of this work. These changes will, no doubt, considerably reduce the present work of the Directorate, but we do not envisage its abolition. In our opinion, not only there is a continued need for such an organisation to effectively co-ordinate the activities of the Department in checking tax evasion but that it should also function in a more positive way by itself gathering all usual information and directing the investigational activities of the Department. We are, therefore, suggesting, in the Chapter on Administration, that the existing Directorate should be reorganised into a Directorate of Investigation and Intelligence.

7.30. One of the most important measures for checking evasion is to provide the assessing officers with useful 'intelligence' about the assessee. No doubt, some arrangements already exist for gathering such intelligence, but, we feel, that these are not quite adequate. In our view, the Directorate should organise, and be responsible for, the collection, collation and dissemination of all such information which will be useful in determining the correct tax liability of the assessee. For this purpose, it should keep in close touch with the various Ministries and Departments which have commercial dealings with the public, particularly the Ministries of Commerce and Industry, Steel, Mines and Fuel, Works, Housing and Supply and Food & Agriculture. It should also maintain contacts with the Directorate of Revenue Intelligence, the Enforcement Branch of the Economic Affairs Department, the Reserve Bank, the Company Law Administration, the Special Police Establishment etc. In addition, it should regularly gather market and economic intelligence, and information regarding fluctuations in the prices of commodities and shares, large deals of a monopolistic nature and blackmarketing, cornering of shares and commodities etc. For this purpose, the Directorate may have its officers at various important commercial centres. This Directorate should co-ordinate the working of the Special Investigation Branches in the various Commissioners' charges and also supervise and control the working of the Collation Branch.

7.31. As for the investigational work, the Directorate should not only coordinate the investigations carried on in the different Commissioners' charges, but it should also render expert technical assistance in the investigations of specially complicated cases. It should constantly keep under review the techniques of examining accounts and discovering concealments and should explain to the assessing officers, from time to time, the various ways adopted by assesseees for manipulating accounts and evading taxes and the methods to be employed for detecting them. We also recommend that this Directorate as well as the Commissioners' offices at Bombay, Calcutta, Madras, Delhi and Ahmedabad should be equipped with modern mechanical aids like the photostat machine for taking photostatic copies of documents, the infra-red photographic equipment and the ultra-violet equipment for detection of obliterations, erasures etc. in documents. This Directorate should also arrange to get the technical advice of the Examiner of Questioned Documents, whenever required.

7.32. One of the proposals suggested for our consideration was the constitution of a Board of Specialists consisting of Specialists non-officials to assist the Department in checking tax evasion. We found that opinion amongst the witnesses was divided as regards the feasibility and the usefulness of such an organisation. *In our opinion, the establishment of a Board of the type proposed would not be of much help in checking tax evasion.* For one thing, a sufficiently large number of non-officials qualified for this purpose is not likely to be available all over the country. For another, the taxpayers in general are not likely to welcome a probe into their affairs by non-officials, some of whom might be even their business rivals. In our view, the problem could be tackled best by Departmental officials experienced in the investigation work. Hence, *we suggest that officer with proved efficiency and experience in assessments of particular trades and industry should be appointed as specialists in the Directorate of Investigation & Intelligence.* These officers will make a specialised study of the different problems relating to the making of assessments in particular industries, trades etc., assigned to them so that they can give technical guidance to the assessing officers in the field. They will help in resolving the difficulties brought to their notice by the assessing officers in respect of assessments in such trades and industries and, in important cases, where a Commissioner considers it necessary, even supervise the making of such assessments. They will also issue circulars regarding margin of profits, price trends, other developments and conditions in the industries and trades etc. having a bearing on assessments, and prepare monographs on assessment problems and procedures relating to the industries and trades allotted to them. They should periodically visit the concerned factories as well as commercial centres and get first hand information regarding manufacturing processes, purchases and sales practices and such other matters as may be of use in the assessment of these trades and industries. *For the present, we suggest that six Specialists may be appointed, one each for the following industries and connected trades:*

- (i) Cotton textiles
- (ii) Other textiles including rayon, and paper.
- (iii) Sugar and connected industries.
- (iv) Iron & Steel and Engineering Industries.
- (v) Cement manufacture and building contractors.
- (vi) Mining and Quarrying, Petroleum and allied products.

7.33. When, in 1954, the Supreme Court's judgments declared the operative provisions of the Taxation on Income (Investigation Commission) Act, 1947 to be *ultra vires* of the Constitution, and thereby prevented the Income-tax Investigation Commission from proceeding with the investigations in the vast majority of the cases referred to it, a new Departmental organisation viz. the Directorate of Inspection (Special Investigation) was set up, to deal with the cases affected by the Supreme Court's decisions. Section 34 of the Income-tax Act was amended in 1954 and again in 1956 to remove the time limit for the reopening of assessments where concealment of more than one lakh of rupees was suspected. The various cases have been concentrated in specially constituted circles, and the investigations and assessments in those cases are done under the immediate guidance and supervision of the Directorate of Inspection (Special Investigation). We understand that a majority of these cases has been investigated into and assessments finalised and that this Directorate, which was set up as a temporary measure, is likely to be wound up shortly upon the finalisation of the remaining cases. *We agree that, once the Income-tax Investigation Commission cases are disposed of, there is no need for a special body like this Directorate.*

7.34. Another suggestion examined by us was with regard to the setting up of a permanent organisation, similar to the Income-tax Investigation Commission, to deal with cases where substantial evasion was suspected. As mentioned in the preceding para the Income-tax Investigation Commission was rendered ineffective when, in 1954, the Supreme Court, in a series of judgments, held the main operative provisions of the Act constituting the Commission to be *ultra vires* of the Constitution. One of the main reasons for the success of the Investigation Commission in detecting and establishing substantial concealments was the wide powers granted to it for making enquiries and gathering information. We find that several of those powers, viz. powers for search and seizure, for impounding books and documents, for obtaining information from banks etc. have been conferred upon the Income-tax authorities by the Finance Act, 1956. We note that the Taxation Enquiry Commission had expressed itself in favour of the setting up of such a body. The Departmental authorities were not at that time vested with the additional powers enjoyed by the Investigation Commission, but the position has now materially changed. In view of this, we do not see much advantage in constituting a separate investigating body. Further, if any such body with wider powers is again set up, its functioning may still be open to the same constitutional objection, and it will indeed be difficult to overcome this objection. Administratively also, the creation of such a body outside the Department is likely to cause difficulties and lack of coordination. *Hence we are of the opinion that the constitution of a separate body like the Income-tax Investigation Commission for dealing with cases of large scale evasion is neither feasible nor necessary in the present circumstances.*

7.35. With a view to improving the quality of assessment work and providing more pre-assessment control, Group Assistant Commissioner's charges have been constituted, since 1956, at some important places. The assessing officers in these charges work under the personal guidance

and supervision of the Group Assistant Commissioners, who have concurrent responsibility for conducting investigations and making assessments in the cases assigned to these charges. The Group Assistant Commissioners themselves chalk out the line of investigations in important cases and guide the assessing officers at every stage. *Apart from other advantages, this system helps in checking evasion.* In the Chapter on Administration, we are discussing the system in detail and recommending its extension.

7.36. In the Chapter on Assessments—Procedure, we have recommended that all assesseees excluding those who are liable to wealth-tax and who, therefore, file their **net wealth statements every year**, should be statutorily required to furnish statements of total wealth once in four years. This measure would help the assessing officer to find out the growth in wealth during two fixed points of time and check it with the assessed incomes after allowing for the assessee's personal expenditure and other outgoings during the interval. Since evaded income is seldom kept hidden for too long, it does come out in the form of some asset or other and hence this method is most effective. It was widely adopted by the Income-tax Investigation Commission, and under the Voluntary Disclosure Scheme also a wealth statement was invariably insisted upon for the settlement of a case. We may mention here that similar method is followed in the United Kingdom where it is known as "Means Test" and also in the United States of America where it is called as "Net Wealth basis". It is interesting to note that even in these countries this method is, of late, being resorted to increasingly for unearthing cases of evasion. *We consider that it would be one of the most effective methods of checking tax evasion.*

7.37. Another suggestion made by us, in the Chapter on Assessments—Procedure, is that auditing of accounts in all cases of business, profession and vocation, with total incomes exceeding certain limits should be made compulsory by law. *This measure also will facilitate detection of concealments and manipulation of accounts.*

POWERS

7.38. We now discuss the powers of the assessing officers. At present, they can call upon assesseees who have made returns of income, wealth etc. to produce in person, or through duly authorised representatives, the evidence on which they rely in support of their returns. Once a notice calling for the return is issued, they can call for the production of any document and books of account relating to the year of account or the three earlier years. They also possess the powers of Civil Courts in regard to compelling production of documents, enforcing the attendance of witnesses and examining them on oath, and issuing commissions for examining witnesses. Further, Income-tax Officers can, on the authorisation of the Commissioner, enter and search any building or place, seize books of accounts and make inventories, etc. In the following paragraphs, we examine if these powers require strengthening in any respect.

7.39. The Income-tax Act does not prescribe any particular method in which accounts of a business should be maintained by the taxpayers. The assesseees enjoy full liberty in this regard. All that is required is that the accounts should be so maintained as to reflect the true position of

the profits, failing which the assessing authorities are given the power, under the proviso to Section 13 of the Income-tax Act, to reject them and to determine the income on such basis as they may consider fit.

7.40. A suggestion made to us was that all traders should be statutorily required to keep closed and adjusted accounts on mercantile basis. *We consider that such a provision is not capable of implementation at this stage.* In the Chapter on Assessment—Procedure, we have already recommended that the Department should examine the feasibility of prescribing certain minimum accounts and the type of accounts to be maintained in respect of each trade, business or vocation in the various parts of the country. We believe that this suggestion will mitigate the difficulties of both the assesseees as well as the assessing officers in this regard.

7.41. Our attention was also drawn to the fact that the Department found, in quite a few cases, that the account books produced were not genuine ones but duplicated books specially prepared with a view to understating the income. It was, therefore, suggested that some sort of compulsion should be brought to bear on the assesseees in the matter of production of genuine and correct accounts, such as forcing them to use only books previously signed and stamped by the officials of the Department. *We do not consider that such a scheme will work satisfactorily because putting identification marks alone cannot guarantee the truth of the entries in the books and also that all the business transactions would be recorded in them.* Moreover, there is the danger that the identification marks might enable assesseees to get false books passed off as genuine. *In our view, this suggestion is likely to do more harm than good and hence we do not recommend it.*

7.42. It was represented to us that the present powers of the Department for calling for and checking current books of account books were inadequate. Under section 22(4) of the Income-tax Act, assessing officers have powers to call for the production of account books relating to the previous year relevant to the particular assessment year and those relating to three preceding years. It is desirable that, in special cases where manipulation of accounts is suspected, assessing officers should have the powers to examine the current books of accounts also. Accounts for the current financial year could be summoned under section 37(1) of the Income-tax Act, but a doubt has been expressed as to whether that power could be exercised when there are no proceedings pending under the Act. *We suggest that the position should be examined further and the statutory provision suitably amended, if necessary, to permit the assessing officers to examine current accounts books also in cases of suspected evasion.* To avoid any inconvenience to the assesseees, we would also suggest that, after obtaining the permission of the Commissioner, the checking of the current accounts should be done in the business premises of the assesseees.

7.43. We also examined whether there was any need for modifying the present powers of the Income-tax Officers in Search and Seizure regard to the entering and searching of any building or place and the seizing of books of accounts or other documents relevant for assessment purposes. These powers were bestowed on the Income-tax Officers in 1956 in pursuance of the recommendations of the Taxation Enquiry Commission. It was urged by some witnesses that, as these powers had been exercised only in a

small number of cases, there was no need for them and that they should be withdrawn. We do not agree with this view. The mere fact that these powers have not been resorted to in a large number of cases does not, in our opinion, minimise their need or justification. We find that other revenue authorities like the officers of the Sales Tax, Customs and Central Excise Departments are vested with similar, and even wider, powers. Such powers are essential for catching the tax evader and establishing beyond doubt the fact of concealment. As a matter of fact, we feel that the Income-tax authorities are not making full use of these powers. This is perhaps due to the fact that the Department is not able, at present, to obtain adequate intelligence about the activities of tax evaders. We hope that the measures which we have suggested in the earlier paragraphs for improving the methods for obtaining such intelligence would rectify this defect, and would help the Department to make fuller use of these powers. We are satisfied that the statutory provisions are, on the whole, adequate and no major change is called for. We would only like to emphasise that in matters like this, timely action is of utmost importance and hence, it should be seen that the interval between the receipt of the information by the Department and the authorisation and execution of search is reduced to minimum. This factor is particularly important in the case of officers who are serving at out-stations.

7.44. We understand that substantial amounts of concealed income and wealth are kept in deposits with the banks and Information from banks shroffs. Though the assessing officers have the power, under Section 38(5) of the Income-tax Act, to obtain information about such deposits, this power is available only in respect of such information as would be useful for or relevant to any proceeding under the Act. It was said that the power could, therefore, be exercised to obtain information only in respect of a particular person, and not for obtaining information about the assessee in general. It was, therefore, suggested to us that as a measure of checking evasion, banks and shroffs should be statutorily required to furnish information regarding the persons making deposits above a specified amount. The Chambers of Commerce, in general, and the Indian Banks Association, in particular, were against this proposal. It was felt that such a provision would retard the development of banking in the country and that it would throw an unduly large burden on the banks. Apart from that, it was said that it was doubtful if such a provision would be as effective now as it was when the Income-tax Investigation Commission had obtained such information from the banks. The provision at that time proved effective, largely because the tax evaders were taken unawares owing to its newness and did not have an opportunity for re-arranging their affairs. Moreover, the implications of the provision would be well known to the assessee and, therefore, it will not be difficult for anyone to get round it by either splitting up transactions or by resorting to other means.

7.45. We appreciate the difficulties pointed out, but we feel that a change could be made in one direction, viz. that banks and other credit institutions should be required to give the names and addresses of their constituents, the sum total of whose deposits or withdrawals exceed Rs. one lakh a year. We are, however, not in a position to assess the volume of work that would be involved in the furnishing of such information and we, therefore, leave it to the Government to arrive at a final decision, after consulting the Reserve Bank of India.

7.46. Another suggestion considered by us was as to whether there should be a statutory obligation requiring the Life Insurance Corporation and other general insurance companies to furnish to the Department the names and addresses of all persons taking life or general insurance policies for sums above a specified limit. Most of the witnesses agreed that such information would be useful in checking evasion but stated that the limits should be fixed at a fairly high level, having regard to the volume of work and the burden it will throw on insurance offices as well as the Department. We consider that limits of Rs. 50,000 for life policies and Rs. 5 lakhs for general insurance policies would be reasonable in this regard. We, accordingly, recommend that Life Insurance Corporation should be statutorily required to furnish the name and address of every person taking life insurance policies for sums aggregating to Rs. 50,000 or more, whether in his own name or jointly with another. The general insurance companies should also be statutorily required to furnish brief particulars of general insurance policies of the value of Rs. 5 lakhs and above, whether taken under one cover or more than one cover by the same person.

7.47. We also examined the suggestion that it should be statutorily provided that payments of money above a specified limit should invariably be made by crossed cheques. Though the proposal is attractive at first sight, it presents many practical difficulties. The majority of witnesses were against the introduction of such a provision. A serious objection to the scheme was that it would not be fool-proof as the requirement could be easily circumvented by the splitting up of the amount to be paid. It was also pointed out that, in the smaller towns and villages, banking facilities were not generally available and that the introduction of the scheme was likely to cause a good deal of inconvenience. We are sufficiently impressed with the objections raised and, therefore, we do not favour the introduction of the suggested provision.

7.48. We have already emphasised the need for gathering of useful information about assesseees for checking tax evasion. One particular way of collecting such information is a systematic exchange of the information available with the various Government Departments, and particularly sister revenue departments. We have, in an earlier paragraph, pointed out how attempts at evading sales tax also result in the evasion of income-tax. Similar is the position with regard to other taxes and duties like customs and excise etc. Detection of evasion of one kind of tax can considerably help in checking evasion of the other taxes as well. It is, therefore, necessary that the activities of the various departments in checking evasion of taxes should be properly co-ordinated and that, for this purpose, there should be a regular and systematic exchange of the useful information available with the various departments. The direct taxes Acts as well as the Sales Tax Acts of the various States permit such exchange of information between the revenue authorities. Some administrative arrangements already exist for an *ad hoc* exchange of such information and these have yielded some good results but we feel that concerted action on a more systematic footing is necessary. The representatives of the State Governments with whom this problem was discussed by us were also of the same opinion and they

have assured their full support to any such measure. *With a view to ensuring closer liaison between the various Government Departments and placing it on a more systematic basis, we make the following suggestions:—*

- (i) Information regarding new assesseees discovered, assessments where additions about a certain figure have been effected and brief particulars of cases where special investigations are being made, should be exchanged between the Sales Tax Department and the Income-tax Department at a conference held between the representatives of the two Departments once in three months.
- (ii) The lists of assesseees should be exchanged between the Income-tax Department and the Sales Tax Department once a year, preferably in the beginning of the financial year.
- (iii) Representatives of the Income-tax, Customs and Central Excise Departments should meet once a month and exchange information gathered during the period useful for their Departments. The registers maintained by the Central Excise authorities posted in various factories should be scrutinised by the assessing officers in suitable cases before they finalise the assessments.

7.49. As mentioned in an earlier paragraph, the Officers in charge of the Special Investigation Branches should function as liaison officers for the above purposes. It should also be secured that the confidential information thus gathered by the Department does not leak out. In this connection, we may mention that in order to check evasion of sales tax as well as income-tax, it would be better if sales tax on the various excisable commodities is converted into an additional central excise duty as has already been done in the case of cloth, sugar and tobacco. We understand that the Government of India are already examining this question in consultation with the State Governments.

7.50. For ensuring a continuous flow of information about large capital transactions as well as preventing transfers of property made with a view to avoiding the payment of taxes, we examined whether any restrictions should be imposed in the matter of registration of transfer of properties. It was suggested that, for this purpose, production of a tax clearance certificate from the assessing officer should be insisted upon by the registration authorities before registering the transfer of a property whose value exceeds a certain limit. The proposal, however, did not meet with favour with many witnesses who felt that it would create undue difficulties and cause inconvenience to the public and, besides, result in delaying the registration of transfers. Unless the limit is fixed at a sufficiently high figure, the number of property transactions and tax clearance certificates would be so large as would throw a considerable burden both on the registration offices as well as the assessing officers. We find that a provision similar to the one proposed is already in existence in the Wealth-tax Act, under which immovable properties, other than agricultural land, of more than rupees one lakh in value, could not be

transferred without a clearance certificate from the Wealth-tax Officer. This provision should, at least in the bigger cases, be sufficient to ensure that properties are not transferred with a view to avoiding tax. So far as the collection of information about such transactions is concerned, we have already pointed out that information about all transfers of immovable property is even now being obtained in the course of external survey from the registration offices. The various administrative improvements we have suggested would ensure the timely collection and utilisation of that information. *Hence, there does not appear to be any necessity for the proposed provision.*

7.51. In this connection, we also examined whether the automatic reporting system recommended by Prof. Kaldor could be worked satisfactorily under the conditions obtaining in India.

Automatic reporting system Prof. Kaldor's object in suggesting the scheme was to enable the taxing authorities to get information automatically about capital transactions as also those relating to revenue without having to call for the same. He pointed out that the scheme was being worked in Sweden successfully, and he recommended its adoption in India. We have had discussions on this subject with various persons—officials and non-officials. Notwithstanding what Prof. Kaldor has stated, *we consider that such a system would throw an undue volume of work and is unworkable under the conditions existing in India today.* Almost the same object is achieved at present by the collection of information from the registration offices and other sources every year and we feel that no further action is called for in this connection. There should, however, be suitable safeguards to ensure that the information thus collected is properly utilised. Suitable security measures should be taken to see that the information thus collected is kept confidential and that the records are not tampered with. In order to minimise the inconvenience to the assessee, where there is no reason to suspect evasion, full details of the items to be verified should be communicated by the assessing officers to the assessee and, as far as possible, the verification should be done at the time the accounts of the assessee come next before them for examination. We have also to point out that the present integrated scheme of taxation is itself self-checking in character and should, in the long run, provide sufficient information to the taxing authorities to put to test the returns and statements of the assessee regarding their income, wealth etc.

7.52. It was represented that the practice of *benami* transactions was frequently resorted to for evading taxes. In a *benami* transaction, the property is acquired or held in the name of a person

Benami transactions other than the real owner without any intention to give such a person the benefit of the real ownership of the property. Such a person is commonly known as *benamidar* or ostensible owner. This practice is common throughout the country and has received recognition from courts of law as well. In the eyes of law, the *benamidar* is the legal owner of the property standing in his name. Unless the assessing officers can prove that the person in whose name the property stands in the documents is not its real or beneficial owner, but only a *benamidar* for another person, it is not possible to consider the property, for purposes of taxation, as belonging to the latter person *viz.* the real or beneficial owner. It is very difficult for the assessing officers to expose the *benami* character of a transaction and to establish it beyond any doubt. All the *apparent* evidence of the legal

document is in favour of the assessee and the assessing officers have mostly to depend on circumstantial evidence for disproving the assessee's contention and for establishing that the transaction is a *benami* one. To obtain such evidence as would satisfy all the legal requirements is, in most cases, exceedingly difficult. We may point out here that *benami* transactions not only help to conceal the true income, wealth etc. of a person, and, thereby, to reduce his true tax liability, but they also make it difficult for the Department to collect the taxes determined to be payable by the real owner.

7-53 We are aware that *benami* transactions are frequently resorted to for evading taxes, but it is not possible on that account to put an end to this practice either by law or otherwise.

Under the present circumstances, the utmost that could be done is to discourage the *benami* transactions, as much as possible, in order to minimise the chances of tax evasion resulting from them. Accordingly, in all cases of *benami* transactions the assessing officer should, as at present, investigate into the real nature of the transaction and determine, for the purpose of taxation, who the beneficial owner of the property is. The decisions of the civil courts, if any, on this point will, no doubt, be taken into account by the assessing officer. *The statements made by any party before the direct taxes authorities with regard to the ownership of any asset should be made available to the other party concerned in the case, if he applies for a copy of it. Necessary amendments should be made in the statutes to secure this result and, in particular, the provisions of Section 54 of the Income-tax Act and the corresponding provisions of the other direct taxes Acts should be so modified as to provide that evidence in respect of wealth or income returned by either party could be obtained by the other, and could be produced before the appropriate court whenever a dispute about the ownership of the property arises. This will act as a deterrent to tax evaders from entering into benami transactions for the purpose of achieving their object.*

7.54. We now come to the practice of 'blank transfers' of shares which, though it has its uses, is also subject to considerable abuses and in fact, has been one of the main methods of tax evasion. "In the blank transfer deed the seller only fills in his name and signature. Neither the buyer's name and signature nor the date of sale are filled in the transfer form. The advantage in giving such a blank deed is that the buyer will be at liberty either to sell it again without filling his name and signature to a subsequent buyer. In the latter case he can avoid the payment for the transfer stamp and new deed to the buyer. The process of purchase and sale can be repeated any number of times with the blank deed and ultimately when it reaches the hands of one who wants to retain the shares, he can fill in his name and date and get it registered in the company's books. For this ultimate transfer and registration, the first seller will be treated as the transferor, even if it happens years after his death. On such registration, the last buyer will be recognised as a shareholder by the company and the other intervening parties being not such shareholders but only having had an equitable right in themselves if they had so desired to be registered as shareholders of the company"*.

*The Thomas Report on Regulation of Stock Exchange, para 46.

It is the common method adopted for share transfers in speculative dealings in this country, and all the Stock Exchanges in the country recognise blank transfer as a valid delivery. It is a fact, however, that by means of these 'blank transfers' dishonest assesses are able to conceal their income from the Department and even if the concealments are detected and assessed, they can avoid the payment of the taxes as the shares are not registered in their names, and they cannot, therefore, be attached and sold. We have considered this question carefully and find that the only effective remedy against blank transfers is the maintenance of adequate records by a stock Exchange in respect of blank transfers which pass through it. All transfer deeds executed by the transferor should be registered by the Stock Exchange and simultaneously date stamped. It should be statutorily provided that the transfer deeds will have a currency of only six months from the date of stamping and that multiple transfers will be permitted only within that period of six months. In order to see that this procedure is invariably followed, the records of Stock Exchanges as well as the brokers should be periodically inspected by the concerned assessing officers.

7.55. The restrictions relating to the period of currency of blank transfers as indicated above might cause inconvenience in cases where the shares are held in a fiduciary capacity or as security. It has also been pointed out that blank transfers in such cases are not intended to evade tax. We are, therefore, of the opinion that the restrictions relating to the period of currency on blank transfers should not be applied in cases--

- (a) where the shares are handed over to a banking company either as a security or for safe custody, or
- (b) where the shares are held on blank transfers by the directors of a company or partners of a registered firm or trustees in a fiduciary capacity.

The banks, however, should be required to communicate to the tax authorities, through an annual statement, brief particulars of the shares held by them under blank transfers.

7.56. Of the many sources from which information relating to the activities of taxpayers is received, informers are one. They are being given monetary rewards, in suitable cases. The conditions governing the grant of rewards to such informers are laid down through executive instructions and not under any statute. Rewards are generally paid only after the taxes resulting from the assessments based on the information given by the informers have been collected. The amount of reward varies according to the circumstances of each case and the payment is entirely at the discretion of the Government but it cannot exceed 2½ percent of the actual gain to revenue as a result of the information given. The merits of the present system have been questioned before us by many and it was represented that no inducement should be given by the Department to informers as it would encourage unscrupulous persons to blackmail assesses and extract money from them as a *quid pro quo* for refraining from furnishing information to the Department.

7.57. The Income-tax Investigation Commission (1947) examined this question and came to the conclusion that—

“the system is likely to be abused and that a general invitation to informers with the inducement of a reward may actually result in more harm than good”.*

The Taxation Enquiry Commission (1953-54), in this connection, remarked as under:—

“Would-be informers are likely to be unscrupulous persons, and the possibility of their resorting to blackmail cannot be overlooked.....the Income-tax Department should exercise the utmost caution in its dealings with the informers. Moreover, the reward that Government can give is not likely to be large and it is possible for the informer, where the evasion involved is considerable, to extract a much higher amount from the assessee as the price of his silence.”**

We appreciate the views expressed and agree that monetary rewards can tend to encourage blackmailers but, as quite a few cases of evasion have been discovered as a result of the information furnished by the informers, we are reluctant to suggest a discontinuance of the present practice in this respect. While we are of the opinion that the present practice should continue, *we recommend that a statutory provision should be made for the punishment of informers who give wrong information. The Department should also be provided with the power to grant immunity from penal proceedings or prosecutions to those who, having abetted an offence in this respect, come forward to give evidence against an assessee. We also suggest that no action should be taken on anonymous or pseudonymous petitions unless they contain some specific information.*

7.58. Since 1948, Government have been insisting on contractors, applicants for import and export licences, etc. submitting a tax clearance certificate from the assessing officers. This practice is based on the principle that no Government patronage should be

Tax clearance certificates given either to those who evade taxes or to those who have defaulted in the payment of the same. Several arguments have been advanced before us against continuance of this practice. It was represented to us that this system had been working harshly, because default in payment of taxes, sometimes occurred on quite justifiable grounds as, for example, circumstances beyond the control of a person and genuine financial difficulties. In such cases, it was argued, the denial of an opportunity to the person concerned for improving himself and earning an income would only render him unable to meet his obligations. Another argument advanced in this connection was that the question whether a person was a tax evader or not was not capable of a prompt and final decision because of pending appeals and reference applications and, therefore, it would be inequitable to refuse a tax clearance certificate in the interim period. *We are of the view that a restriction of the nature now in existence is an effective one in checking tax evasion and*

*Report of the Income-tax Investigation Commission, Para 306, page 137.

** Report of the Taxation Enquiry Commission, Vol. II para 17, page 194.

defaults in payment of taxes. We have, in the Chapter on Appeals and Revisions, already expressed our views on the problem of staying collection of taxes in dispute. Our recommendations in that regard should be sufficient to cover genuine cases of difficulties. *In order, however, to provide an opportunity to those who have reformed, we suggest that tax clearance certificates should not be refused to those who have evaded or defaulted once but have thereafter kept a clean record with the tax authorities for atleast three years continuously.*

PENALTIES AND PROSECUTIONS

7.59. Having discussed the measures for detecting tax frauds, we now proceed to examine the question of punishments for such frauds and various other defaultis in complying with the provisions of the tax laws. The various direct taxes Acts already provide that in cases of concealment of income, wealth, expenditure, gifts etc. or deliberate furnishing of inaccurate particulars in regard to them, penalties upto a maximum of 1½ times the amount of tax sought to be evaded could be levied. Penalties upto 1½ times the amount of tax payable could also be levied if a person failed to furnish the prescribed return within the time allowed. Similar penalties are also prescribed for failure to comply with other statutory notices. Besides monetary penalties, the various direct taxes Acts also provide for prosecution for various acts of commission and omission as enumerated in Sections 51 and 52 of the Income-tax Act and the corresponding sections of the other direct taxes Acts. The statutes, however, prohibit institution of prosecutions on the same facts on which a penalty has been imposed.

7.60. We have, in an earlier paragraph, pointed out that though the maximum penalty leviabale is 150 per cent of the tax sought to be evaded, such a high penalty is rarely levied, and even the moderate penalties imposed by the assessing officers are reduced by the appellate authorities to nominal amounts. Non-levy of deterrent penalties has been an important factor encouraging evasion. It appears to us that the present statutory provisions dealing with the levy of penalty are defective in that they do not distinguish a minor lapse from a major offence and the same maximum penalty has been provided for all kinds of defaults. We understand that, with a view to remedying these defects and also to securing uniformity in the application of the penalty provisions as to the quantum of penalty levied by the different officers of the Department in cases of different types and degree of offences, the Central Board of Revenue has issued administrative instructions requiring the assessing officers to levy penalties at standards much lower than the maximum, viz. 15, 20 or 50 per cent of the tax sought to be evaded, depending on the different circumstances of the case as mentioned in the instructions. Thus, for offences under section 28(1) (a) and (b) of the Income-tax Act, separate standard penalty of 50 per cent of the tax payable or the tax that would have been avoided, subject to a minimum of Rs. 25, has been prescribed under those instructions, though the maximum penalty leviabale under the law in each case is 150 per cent of the tax. Surprisingly, however, we came to know that even in those cases where the reduced penalties of 50 per cent have been levied, the appellate authorities, in very large number of cases, have further reduced the penalty to nominal sums. Thus, while on the one hand, we have on the statute a very stiff maximum penalty of 1½ times the tax payable or the tax sought to be evaded, in actual practice, even a 10 per cent penalty is not ultimately levied in many cases. This is demoralising as it takes

away the deterrent effect of the penalty provisions. What is important is not the law as it exists in the statute book but the law as administered in practice.

In the U.S.A.* as well as in certain other countries, there are fixed but graded rates of penalty for different kinds of offences, depending upon the seriousness of the offence. Once the penalty provisions are attracted, the rate cannot be varied either by the assessing officer or by the appellate authority. The main objection against such a levy is that it may, sometimes, act unduly harshly. This difficulty can, however, be met by defining in a schedule the various kinds of defaults and offences in detail and the quanta of penalties leviable. For each offence in the schedule, a lower and upper limit may be prescribed, discretion being given to the assessing and appellate authorities to vary the penalty within those limits depending upon the circumstances. *We accordingly suggest that a detailed schedule of penalties be drawn up and incorporated in the statute book in place of Section 28 of the Income-tax Act and corresponding sections of the other direct taxes Acts. The schedule should make a distinction between cases of deliberate concealment or gross or wilful neglect and others which are not due to fraud, gross or wilful neglect, the levels of penalty for the latter category being much lower than for the former. The maximum penalty leviable for concealment of deliberate furnishing of inaccurate particulars should continue to be 150% of the tax sought to be evaded as at present.*

7.61. It was represented to us that the present provisions of section 28(1) (c) of the Income-tax Act and the corresponding provisions of the other Acts threw an undue burden on the Department, as, in all such cases, the onus of establishing, beyond reasonable doubt, that the assessee had concealed his income or furnished inaccurate particulars deliberately, was on it. To remedy this state of affairs, it was suggested that the burden of proof should be placed statutorily on the assessee who alone was in the know of the facts relating to his liability, and through our Questionnaire, we specifically sought the views of the public on this

* Sections 291 and 293 of the Internal Revenue Code, 1952 read as under:—

“Section 291 : FAILURE TO FILE RETURN.

- (a) In case of any failure to make and file return required by this chapter, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, there shall be added to the tax : 5 per centum if the failure is for not more than 30 days with an additional 5 per centum for each additional thirty days or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax under this section shall be in lieu of the 25 per centum addition to the tax provided in section 3612(d)(1). [Section 291(b)—Repealed].

“SECTION 293 : ADDITIONS TO THE TAX IN CASE OF DEFICIENCY.

- (a) Negligence.—If any part of any deficiency is due to negligence or intentional disregard of rules and regulations but without intent to defraud, 5 per centum of the total amount of the deficiency (in addition to such deficiency) shall be assessed, collected, and paid in the same manner as if it were a deficiency, except that the provisions of Section 272(i), relating to the prorating of a deficiency, and of section 292, relating to interest on deficiencies, shall not be applicable.
- (b) FRAUD.—If any part of any deficiency is due to fraud with intent to evade tax, then 50 per-centum of the total amount of the deficiency (in addition to such) deficiency shall be so assessed, collected and paid in lieu of the 50 per centum addition to the tax provided in section 3612(d)(2).

suggestion. This proposal has been opposed by a number of witnesses on the ground that it amounts to requiring a person to prove the negative and is opposed to the fundamental principles of criminal jurisprudence. It has been pointed out that there are provisions in other countries including the United Kingdom where the onus of proving that the omission to disclose income did not proceed from any fraud or wilful neglect is on the assessee himself. It has, therefore, been urged that there should be no objection to having similar provisions in the Indian taxing statutes. We have carefully considered this question and we appreciate the difficulties faced by the Department in discharging the burden of proof for levying penalties. We recommend that the penalty provisions of the direct taxes Acts should be brought in line with section 49(1) of the Income Tax Act, 1952 of the United Kingdom.*

7.62 At present, the previous approval of the Inspecting Assistant Commissioner is necessary in all cases where penalties are proposed to be levied under Section 23 of the Income-tax Act and corresponding provisions of the other direct taxes Acts.

Approval of the Assistant Commissioner and time limit
This is one of the factors leading to considerable delay in the disposal of penalty cases. It also involves some duplication of effort. Assessee have also complained that there is no provision in the statute requiring the Inspecting Assistant Commissioners to give a hearing to the assessee before they accord approval to the levy of penalty.

7.63 We have suggested in para 7.60 that in the matter of levying penalties, a distinction should be made between the different kinds of defaults and offences, and that the penalties leviable should be specified in a detailed schedule. In our opinion, a similar distinction should be made in the matter of requiring the prior approval of the Inspecting Assistant Commissioner for levying penalties, and such approval should be obligatory only in cases of more serious offences, where the quantum of penalties leviable are heavier. Further, the Inspecting Assistant Commissioner should be statutorily required to give a hearing to the assessee before according his approval to the levy of penalty in such cases. In order to avoid unduly long delays in the finalisation of penalty proceedings, we also recommend that the law should be amended so as to require such proceedings to be completed within one year of the passing of the relevant assessment order or of the appellate order of the Appellate Assistant Commissioner or the Appellate Tribunal or of the revision order of the Commissioner, as the case may be.

7.64. Section 51 of the Income-tax Act and the corresponding sections of the other direct taxes Acts provide for the prosecution of a person who fails, without reasonable cause or excuse, to deduct taxes at source and pay them to the Government or

* Section 49(1) of the U.K. Income Tax Act, 1952 reads as under :—
49(1). If the Additional Commissioners or the General Commissioners (a) have made a charge to tax under Schedule D in respect of a sum in excess of the amount contained in either the statement or the schedule of a person, to be charged; or (b) discover, from the information of the surveyor, or otherwise, that a charge to tax in respect of a sum in excess of either such amount ought to be made, and an assessment is made, at any time with in the year of assessment or within three years after the expiration thereof, they may, unless the person to be charged proves to their satisfaction that the omission by him did not proceed from any fraud, covin, art, or contrivance or any gross or wilful neglect, charge that person, in respect of such excess, in a sum not exceeding treble the amount of the tax on the amount of the excess.

to furnish such certificates, returns or statements, or to allow inspections as required under the Acts. He is punishable, on conviction before a magistrate, with fine which may extend to Rs. 10/- for every day of default. Under Section 52 of the Income-tax Act, if a person makes a false statement in the verification contained in the return of income, the return of dividends, application for registration, appeals etc., he is punishable, on conviction before a magistrate, with simple imprisonment which may extend to six months or with fine which may extend to Rs. 1,000, or both. The period of imprisonment prescribed in the other direct taxes Acts for such offences, is, however, one year.

7.65. We have, in an earlier paragraph, referred to the fact that, during the last 10 years, the Department had not been able to get even a single person convicted in a court of law for an offence against the Income-tax Act. Though preliminary proceedings had been initiated in a small number of cases, they were dropped ultimately, either because the case had been compounded or the evidence was not found strong enough to secure conviction. Perhaps, the Department prefers penalty proceedings to prosecution because the latter involves considerable time and expense and success also is problematical, whereas penalty proceedings, particularly in cases of settlements, are certain and revenue yielding. Another reason probably is that, as pointed out in para 7.59, Section 28(4) of the Income-tax Act and the corresponding provisions of the other direct taxes Acts bar prosecutions in respect of the same facts on which a penalty has been imposed under that Section. This has somewhat an inhibiting effect on the Department launching prosecution, since if the prosecution proceedings fail, the tax evader would escape penalty as well. *Whatever might have been the reason, failure to institute prosecutions even in clear cases of tax evasion cannot, in our opinion, be justified.* Criminal prosecution is one of the most effective deterrents against tax evasion and we observe that, in other countries, prosecutions are being freely resorted to. In the United Kingdom, during 1957-58 alone, the Inland Revenue Department prosecuted as many as 85 persons of whom 81 were convicted. Prosecutions for offences against tax laws are quite common in U.S.A. also, as would be seen from the statement reproduced in para 7.2. *We feel that in all cases of deliberate concealment, where there is sufficient evidence, the Department should, as a rule resort to criminal prosecution.*

7.66. We find that though the United Kingdom Income Tax Act, 1952 contains provisions more or less similar to Section 52 of the Indian Income-tax Act, criminal proceedings in that country are generally launched not under the Income-tax Act but under Sections 1 or 5 of the Perjury Act. There are similar provisions in the Indian Penal Code and we consider that, in suitable cases, it should be possible to proceed under the relevant sections of the Indian Penal Code in respect of giving false evidence, false declaration or false statement. Of the various sections of the Indian Penal Code that are applicable, Sections 193 and 196 are specifically referred to in Section 37 of the Income-tax Act and the corresponding provisions of the other direct taxes Acts. *We suggest that Government should consider whether Sections 177, 191, 192, 199 and, perhaps, 181 of the Indian Penal Code should also be specifically referred to in the direct taxes Acts. As the punishments provided in the Indian Penal Code are more stringent, we are of the opinion that resort should be had more frequently to the provisions of the Indian Penal Code than to those of taxing statutes.* A technical objection may, however, be raised by some that the direct taxes Acts are self-contained enactments providing for penalties and prosecution and that no prosecution for tax offences can,

therefore, be resorted to under the Indian Penal Code. With a view to meeting such an objection, *we recommend that there should be a specific provision in the direct taxes Acts permitting the Department to take action also under the Indian Penal Code. We note that there is a similar provision viz. Section 503 in the United Kingdom Income-tax Act, 1952.** We also recommend that deliberate concealment of income, wealth etc. should be made a specific offence punishable under Section 52 of the Income-tax Act and the corresponding provisions of the other direct taxes Acts. It would be in the interests of the taxpayers as well as revenue if, while signing the declaration in the various tax returns, their attention is drawn specifically to the penalties provided under these Acts as well as in the Indian Penal Code. *We, therefore, recommend that in the returns form itself there should be a foot-note to the effect that false or incorrect declaration would attract the penalties provided under Sections 28 and 52 of the Income-tax Act or the corresponding provisions of the other direct taxes Acts, as the case may be, and Sections 177 and 199 of the Indian Penal Code. The relevant sections also should be reproduced in toto in the return form.*

7.67. A suggestion was made to us that Section 52 of the Income-tax Act and corresponding provisions of the other direct taxes Acts should be amended with a view to making the return of income itself an evidence. It has been argued that, even as it is, a return received by an assessing officer is evidence, though it is not specifically stated to be so in the direct taxes Acts, because it is on the basis of the return itself and after taking it into consideration that the officer passes an assessment order under Section 23 of the Income-tax Act and corresponding sections of the other direct taxes Acts. Besides, a tax authority is a public servant and hence the provisions of Section 199 of the Indian Penal Code would also be applicable in our opinion. Apart from this, Section 37(4) of the Income-tax Act and the corresponding Sections of other direct taxes Acts already provide that any proceedings before any authority referred to in that Section should be deemed to be a judicial proceeding within the meaning of Sections 193 and 228, and for the purposes of Section 196 of the Indian Penal Code. We have also noted the observations of the Supreme Court in the case of *Surajmal Mohta*** to the effect that "Under the provisions of Section 37 of the Indian Income-tax Act, the proceedings before an Income-tax Officer are judicial proceedings and all the incidents of such judicial proceedings have to be observed before the result is arrived at". *In the circumstances, no amendment in this regard appears to be necessary.*

7.68. We also examined whether any modification was necessary in regard to the maximum period of imprisonment prescribed in the direct taxes Acts for false statements in declaration. As has been already pointed out in an earlier paragraph, the maximum period of imprisonment under Section 52 of the Income-tax Act is six months while under the corresponding provisions of the other direct taxes Acts, it is one year. If prosecutions are launched under the Indian Penal Code, the maximum period of imprisonment would vary from six months to seven years depending upon the section under which action is taken. Our attention, in this connection, was drawn to the provisions of Section 5(2) of the Prevention of Corruption Act, 1947 (2 of 1947) and it was suggested that a maximum sentence of seven years as provided in that Section should

* Section 503 of the U.K. Income Tax Act, 1952 reads as under :

"The provisions of this Act shall not save so far as is otherwise provided, affect any criminal proceedings for any felony or misdemeanour".

** *Surajmal Mohta & Co. Vs A. V. Viswanatha Sastri & another* (1954) 26 I. T. R. 13

also be adopted for offences against the direct taxes Acts. It was urged that evasion of taxes was no less a serious crime than corruption and that, in some cases, the evasion of tax itself led to corruption. While we see the force of this argument, we do not consider that enhancing the maximum period of sentence will itself serve any useful purpose at the present moment when, practically, no prosecutions have been launched for the past several years. Another suggestion made to us in this context was to provide, in the statute itself, for a minimum period of imprisonment. We do not consider that it is necessary at this stage to introduce such a provision but, if in actual practice hereafter the Department finds that the Courts are averse to awarding imprisonment the question of amending the existing provisions so as to provide for a minimum period of imprisonment in cases of conviction may be examined.

7.69. One reason for the failure to launch prosecution proceedings in fit cases appears to be that there is no special agency in the Department entrusted with the specific responsibility for examining cases suitable for prosecution, and for initiating and pursuing prosecution proceedings. The Income-tax Officers and Assistant Commissioners are so preoccupied with their day to day work that this job, which requires a detailed investigation of facts as well as an objective appraisal of the evidence on record, receives low priority. Besides, prosecution proceedings require a specialised knowledge and experience of criminal law and procedure. We, therefore, suggest that there should be an Enforcement Branch in each Commissioner's charge manned by specially trained Income-tax Officers or legal practitioners with experience of criminal law and procedure. Income-tax Officers selected for this Branch should, prior to their posting, receive intensive practical training in criminal law and procedure. It will be the responsibility of these officers to be on the look-out for suitable cases of prosecution and pursue them to a finality. There should be an arrangement by which assessing officers as well as Assistant Commissioners forward, every month, flagrant cases of concealment to the Enforcement Branch. The Officer-in-charge of the Branch should examine them and pick out such of the cases as, in his opinion, have a reasonable chance of success in criminal proceedings. He must then put up such cases for the approval of the Commissioner. In this connection, we would suggest that prosecutions in cases of offences referred to in Section 51 of the Income-tax Act and the corresponding provisions of the other direct taxes Acts should be launched with the prior approval of the Commissioner. Prosecutions for offences mentioned in Section 52 of the Income-tax Act and corresponding provisions of the other direct taxes Acts or any of the provisions of the Indian Penal Code should be launched with the prior approval of the Central Board of Revenue in order that there may be an uniform policy in this matter. Such a provision will also enable the Board to ensure that prosecutions are launched only where there is a sufficient evidence on record. We also understand that in U.K. prosecutions are initiated only in the name of the Commissioners of Inland Revenue who constitute the Board of Inland Revenue. Once it is decided by the competent authority that prosecution proceedings should be launched, it should be the responsibility of the officer in charge of the Enforcement Branch to prepare the case properly, brief the counsel and, in short, to take all such steps as may be necessary to pursue the case vigorously and secure conviction of the offender. While we do not recommend the withdrawal of the existing powers to compound offences for which prosecutions are launched, we do feel that such powers should be exercised only in exceptional cases and not as a matter of course. In particular, there should be no attempt at compounding an offence merely because the composition fee offered is

substantial. Compounding in any case should be done only with the approval of the authority sanctioning the prosecution.

7.70 We have pointed out in para 7.65 how the present provisions of the direct taxes Acts prohibiting prosecutions in respect of the same facts on which a penalty has been imposed, has discouraged the Department from launching prosecutions. We do not appreciate the rationale of such a restriction. We find that, in the United States of America, it has been specifically laid down that prosecutions can be launched in addition to the levying of penalties provided by law.* In the United Kingdom also, though for some minor offences prosecution is alternative to departmental penalty, prosecutions can be initiated for all major offences even though penalties have also been levied by the Department on the same facts. We have carefully considered this matter and see no reason why prosecution proceedings should be barred in cases where penalties have been levied. We, accordingly, recommend that provisions of Section 28(4) of the Income-tax Act and the corresponding provisions of the other direct taxes Acts, should be deleted.

7.71 Another suggestion examined by us for eliminating tax evasion was to provide in the direct taxes Acts for punishment of abetment of tax evasion. The Income-tax Investigation Commission had recommended to make abetment of tax evasion a punishable offence under Section 28 of the Income-tax Act with fine extending to Rs. 500/-. Following this recommendation, the Government had provided in the Income-tax (Amendment) Bill, 1951 that, "if a person abets the commission of a default or the doing of anything by another person whereby the other person is rendered liable to prosecution under Section 51 or Section 52, the person abetting shall, on conviction before a magistrate, be punishable with the punishment provided for the offence abetted". The provision, however, could not be put on the statute book as the Parliament had been dissolved before the Bill could be passed.

7.72 We have considered the matter carefully in the light of the arguments advanced for and against the proposal. There are provisions in the tax laws for punishing various tax offences. There is no reason why there should not also be provisions in the tax laws themselves for punishing abetment of such offences. In several other countries, punishments for offences against the tax laws as well as abetment of such

*Extract from Section 145 of the Internal Revenue Code, 1952 of the United States of America :

"Section 145 : (a) Failure to file returns, submit information or pay estimated tax or tax—Any person required under this chapter to pay any estimated tax or tax, or required by law or regulations made under authority thereof to make a return or declaration, keep any records, or supply any information for the purposes of the computation, assessment, or collection of any estimated tax or tax imposed by this chapter, who wilfully fails to pay such estimated tax or tax, make such return or declaration, keep such records, or supply such information at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanour and, upon conviction thereof, be fined not more than \$ 10,000, or imprisoned for not more than one year, or both, together with the costs of prosecution.

(b) FAILURE TO COLLECT AND PAY OVER TAX, OR ATTEMPT TO DEFEAT OR EVADE TAX—Any person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who wilfully fails, to collect or truthfully account for and pay over such tax, and any person who wilfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof be fined not more than \$10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

offences are provided for in the tax laws themselves, in addition to there being provisions in the general criminal law of the land for dealing with these offences. In the United Kingdom, while conspiracy to defraud the Crown of lawful taxes due is an indictable common law misdemeanour there are several provisions in the Income Tax Act, 1952 itself for punishing aiding, abetting, assisting, inducing or instigating another person to commit offences against the Act. We are of the considered opinion that, if evasion of taxes has to be effectively checked, its abetment should be made punishable under the tax laws. We, therefore, recommend that a provision similar to the one contained in the Income-tax (Amendment) Bill, 1951 should be introduced in all the direct taxes Acts at the earliest opportunity. In cases where it is proposed to proceed against an abettor, the prosecution proceedings against him should be launched simultaneously with those against the assessee concerned.

7.73. It was pointed out to us that it might be difficult to obtain sufficient evidence to establish the fact of abetment. With a view to getting over this difficulty, we consider it necessary to require the tax representatives to give a declaration, in a prescribed form, about the correctness of the returns submitted by their clients. We find that, in the United States of America, the person preparing a tax-payer's return also must sign the following declaration:*

Declaration by Tax
representatives

"I declare under the penalties of perjury that I prepared the return for the person(s) named herein; and that this return (including any accompanying schedules and statements) is, to the best of my knowledge and belief, a true, correct and complete return based on all the information relating to the matters required to be reported in this return of which I have any knowledge."

The Return prescribed under the Australian Income-tax Act also contains a provision for a declaration to be made by the representative.

7.74 On a careful consideration of the matter, we feel that the tax representatives in India also should be required to furnish such a declaration, so that the responsibility for the correctness of the returns of their clients could be fixed on them. This requirement will also help in the maintenance of a proper code of professional conduct among tax representatives. We, therefore, suggest that the Income-tax Return form, in cases of incomes above Rs. 20,000, and the return forms prescribed under the other direct taxes Acts should provide for a declaration and certificate in the form given on the next page, from the representative who prepares or assists the assessee in the preparation of the return.

(I'de para 7-74)

PARTICULARS RELATING TO SOURCES OF INFORMATION

- | | | | |
|------------------|---|---|-------------------------------------|
| To be given by : | <p>A. Any person who charges directly or indirectly any fee for preparing or assisting to prepare, the return.</p> <p>B. Every person carrying on business who does not furnish with his return a Representative's certificate.</p> | } | Cross out whichever does not apply. |
|------------------|---|---|-------------------------------------|

QUESTION

ANSWER

- (1) What books of account, if any, are kept by or on behalf of the assessee

QUESTION

ANSWER

- (2) By whom are those books of account kept ?
(State name and address)
- (3) Are those books of account audited each
year? If so, by whom?
- (4) Is the return in accordance with those
books?
- (5) If the return is not in accordance with
those books, on what basis and upon what
information has the return been prepared?
- (6) Have you satisfied yourself, and, if so, how,
that the books of account or other sources of
information upon which the return is
based are correct and disclose the whole
of the assessee's income, wealth, etc. from
all sources?

N.B. No. (6) to be answered only by the
person mentioned in 'A' above.

CERTIFICATE BY
REPRESENTATIVE

I,, having charged the assessee a fee for preparing or assisting
in the preparation of the return, hereby certify that the answers set forth above
in the second column in this statement, opposite to the questions set forth in the first
column thereof, are true and correct in every particular.

Signature of the representative

Date :

Where the representative is a partnership or a company, this certificate must be signed in
the name of the partnership or company, as the case requires, by a person who is registered as a
nominee of that partnership or company, and that person's name must also be appended.

7.75 An objection has been raised by some that the proposed provision
would make the task of the representatives difficult because, in many
cases, they might not be in a position to comply with the requirements
of item 6 of the form, viz. satisfying themselves about the correctness
of the income, wealth etc. shown in the return. This objection, in our
opinion, is not well-founded. Under the Companies Act, 1956, all limited
companies are already required to have their accounts audited and the
auditors have to give a fairly comprehensive report as indicated in
Section 227 of that Act. We have also, in the Chapter on Assessments—
Procedures, recommended that in all non-company cases with business
incomes exceeding Rs. 50,000, the accounts should be compulsorily
audited by a Chartered Accountant, who should be required to give a
certificate in the prescribed form. Hence so far as cases of limited
companies or of other persons with business incomes above Rs. 50,000 are
concerned, there should be no difficulty in answering the question at
item 6 of the declaration. As regards the other cases, if the representa-
tive or the adviser has not satisfied himself about the correctness of the

turn and the books of account or other sources from which the return was prepared he might quite clearly say so. In this view of the matter, it cannot be said that the proposed declaration would throw any additional burden or work on the representative.

VOLUNTARY DISCLOSURES

7.76 We examined the question whether a scheme for acceptance of voluntary disclosures of concealed income, wealth etc. should be incorporated in the taxing statutes. We find that such a scheme forms part of the tax codes in several other countries. In the United Kingdom, for example, the 'confession' method has been in existence since 1923 and is now a recognised method of settling cases of concealment (vide Section 504 of the United Kingdom Income Tax Act, 1952*). In U.S.A. also there is a provision for arriving at compromises regarding tax liabilities (Section 3761**—Internal Revenue Code). Similar arrangements exist in many of the other countries as well. The concessions extended to assesseees in such cases consist usually in the dropping of criminal proceedings, reducing the quantum of penalty and the granting

* Section 504 of the United Kingdom Income Tax Act, 1952 :—

- (1) "Statement made or documents produced by or on behalf of a person shall not be inadmissible in any such proceedings as are mentioned in subsection (2) of this section by reason only that it has been drawn to his attention that—
 - (a) in relation to income tax, excess profits tax and the profits tax, the Commissioners of Inland Revenue may accept pecuniary settlements instead of instituting proceedings ; and
 - (b) though no undertaking can be given as to whether or not those Commissioners will accept such a settlement in the case of any particular person, it is the practice of the Commissioners to be influenced by the fact that a person has made a full confession of any fraud or default to which he has been a party and has given full facilities for investigation, and that he was or may have been induced thereby to make the statements or produce the documents.
- (2) The proceedings mentioned in subsection (1) of this section are—
 - (a) any criminal proceedings against the person in question for any form of fraud or wilful default in connection with or in relation to income tax, excess profits tax or the profits tax; and
 - (b) any proceedings against him for the recovery of any sum due from him, whether by way of tax or penalty, in connection with or in relation to incometax, excess profits tax or the profits tax.

** Section 3761 of the Internal Revenue Code, 1952 of the United States of America :—

- "(a) AUTHORIZATION—The Commissioner, with the approval of the Secretary or the Under Secretary of the Treasury, or of an Assistant Secretary of the Treasury, may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for prosecution or defence and the Attorney General may compromise any such case after reference to the Department of Justice for prosecution or defence.
- (b) RECORD—Whenever a compromise is made by the Commissioner in any case there shall be placed on file in the office of the Commissioner the opinion of the General Counsel of the Department of the Treasury, or of the officer acting as such with his reasons therefor, with a statement of—
 - (1) The amount of tax assessed.
 - (2) The amount of additional tax or penalty imposed by law in consequence of the neglect or delinquency of the person against whom the tax is assessed, and
 - (3) The amount actually paid in accordance with the terms of the compromise.

of easy and convenient instalments for paying the taxes. As discussed by us, in the Chapter on Collection and Recovery, determination of tax liabilities on the basis of settlement is not alien to the Indian tax system either. The Taxation of Income (Investigation Commission) Act, 1947 authorised settlement of cases under investigation and many of the cases were completed on the basis of settlement by the Commission. Section 34(1B) of the Income-tax Act, which was introduced in 1954, also provides for settlement of tax liability in certain types of cases.

7.77 An event of considerable importance in the history of income taxation in India was the launching of the Voluntary Disclosure Scheme by the Government of India in May 1951. As a result of this bold venture, a large amount of money concealed from the Department was brought out into the open adding, in the process, to the coffers of the State its legitimate share of the tax evaded. Apart from the benefits which accrued to the Indian economy in the form of additional investments and to the exchequer in the form of additional taxes, the scheme contributed, to some extent, to the improvement of the relations between the Department and the public. The feeling of mutual distrust gave way to a sense of better understanding and appreciation of the problems of each other.

7.78 Though the scheme as such was to be in operation till 22nd October 1951 only, the principle of the scheme has been continued even thereafter. The statistics furnished to us by the Central Board of Revenue show that disclosures have been made in 20991 cases, out of which 20912 cases have been settled by the end of 1958-59. The income assessed in these cases before disclosure had amounted to only Rs. 11.53 crores, while the total income determined liable to tax after disclosure in these cases was Rs. 81.73 crores. Thus, an additional income of Rs. 70.20 crores has been brought to tax under the scheme. The additional revenue resulting from the disclosures amounted to Rs. 10.98 crores.

7.79 There was a widespread demand from the Chambers of Commerce and trade associations that a scheme similar to the one launched in 1951 should be introduced. The very fact that the demand was made by so many chambers would seem to show that there are large sums of evaded money kept underground. It has been represented that these monies are having many undesirable effects on the economy of the country leading, among other things, to inflation, payments of on-money, prevalence of cash transactions, cornering of goods and shares, hoarding of gold, which in turn pushes up the prices of gold to unhealthy levels and thereby gives a stimulus to the smuggling of gold etc. It was argued that if only this money could be brought to the open and made available for the development of the economy, not only would these undesirable tendencies be checked, but also the economy of the country would benefit considerably. On the other hand, many witnesses, including several men in public life and a few chambers, have pointed out that such a scheme should not be introduced, as it would almost amount to giving a premium on tax evasion. *We have carefully considered the proposal in all its aspects and, notwithstanding the considerable advantages that would accrue to the economy if this concealed money is brought into the open, we are of the opinion that, under the circumstances prevailing at present, a scheme of this nature is not justifiable.* There were special circumstances in 1951 which justified the introduction of the scheme then and the grant of special concessions. The conditions that obtained during the period of the War and the immediate post-War period were abnormal and there were special factors which led to not only the

extraordinary growth of incomes but also opportunities for concealing them. It should not also be forgotten that much of the concealed income related to the pre-Independence era. The same conditions do not exist now. Any amount which is sought to be disclosed now would either relate to the income concealed in the post-1951 period or if concealed prior to 1951, must be one which the assessee did not care to disclose under the 1951 Voluntary Disclosure Scheme. In either case there is no justification for showing special consideration to such persons. This is not to say that a person who has erred and who wants to make amends for it should be discouraged from doing so. Even at present under the direct taxes Acts, it is always open to a taxpayer to come forward and disclose his concealed income, wealth etc. Naturally it is for the Department to satisfy itself whether the disclosure is full and complete, whether further investigation should be made and if the disclosure is to be accepted, what penalty should be levied. In our opinion, while the Department should have complete discretion in the matter and should not give an undertaking to any such taxpayer that they would accept a pecuniary settlement and not institute criminal proceedings, in practice the Department would be influenced by the fact that the taxpayer had made a full confession and had given full facilities for investigation. It should also be made clear that any statement made or any document produced by the taxpayer in any disclosure would be taken as a statement made or document produced in the normal course of proceedings under the Act and such evidence should not be inadmissible in respect of any criminal proceedings that may be instituted.

7.80. As stated earlier, the principle of settlement has been incorporated in the Income-tax Act only in a limited form for a specified type of cases. *We consider that these powers should be enlarged and the Central Board of Revenue authorised to arrive at settlements with the assessee at any stage of the proceedings under the direct taxes Acts, including the stage of appellate proceedings before the Appellate Assistant Commissioner or Appellate Tribunal or after the appellate authorities have passed final orders. Administratively, it will be better if disclosure cases are settled by the Commissioner of Income-tax where the tax involved is Rs. 2 lakhs or less, and where the tax is over Rs. 2 lakhs, the case should be settled by a committee consisting of the Chairman and two Members of the Central Board of Revenue. Limited powers could also be delegated to Assistant Commissioners but it should be ensured that, except in the cases settled by the Board, brief particulars of the cases settled are sent to the next higher authority.*

SUGGESTIONS TO AMEND THE LAW

7.81. Early in this Chapter, we referred to the leakage of revenue through 'avoidance', and pointed out that avoidance of tax could be checked by plugging the loopholes in the law. In the course of our enquiry, numerous instances of how avoidance was being successfully resorted to by recourse to the various loopholes in the law came to our notice. We discuss below the more important ones and make our recommendations in respect of them.

(1) At present, remittances of past foreign profits are not taxable under Section 4(1) (b) (iii) of the Income-tax Act if they are brought or received in India by some agent or nominee or any other person on behalf of the assessee and not by the assessee himself. *This position is unsatisfactory*

as it leads to avoidance of tax and should be remedied by amending the law, making even such remittances taxable.

(2) The existing provisions relating to exemption of the income of charitable trusts under Section 4(3) (i) of the Income-tax Act contain certain loopholes which help the formation of pseudo charitable trusts.

Under the law as it is at present, the income of a trust will be exempt from tax so long as the ultimate objects of the trust are of a religious or charitable character and so long as the income is applied or accumulated for being ultimately applied to such religious or charitable purposes. Thus, even though for long periods of time, the trust funds may be invested and utilised for furthering the donor's business interests, the income of the trust fund would, nonetheless, continue to enjoy exemption from tax. In a reported case*, where an industrialist created a trust for charitable purposes but stipulated that for a period of 18 years the trust funds and the income therefrom was to be invested in the shares of a company through which the donor controlled other companies in which he was interested, it was held by the Court that the income of the trust still enjoyed the exemption from tax under Section 4(3) (i), because the income of the trust property was ultimately set apart for charitable purposes. In this way the objects of a trust as also the object of granting exemption under Section 4(3) (i) of the Income-tax Act, are being defeated.

Another wide loophole rests in the interpretation of the word "property", whereunder a trust could carry on business which had nothing to do with the primary object of the trust itself and still get exemption in respect of the income from this business. Courts** have held that business can also be 'property' held under trust. Certain amendments in Section 4(3) (i) of the Income-tax Act were made through the Indian Income-tax (Amendment) Act, 1953 to try to ensure that income of a 'charitable' business got exemption only if the business was carried on on behalf of a religious and charitable institution and was carried on in the course of implementing a primary purpose of the institution or the work of the business was mainly done by the beneficiaries of the institution. This was done by adding proviso (b) to Section 4(3) (i) of the Indian Income-tax Act. That proviso says that the income derived from property held under trust for religious or charitable purposes shall not be exempt and shall consequently be included in the total income:

- “(b) In the case of income derived from business carried on on behalf of a religious or charitable institution, unless the income is applied wholly for the purposes of the institution and either:
 - (i) the business is carried on in the course of the actual carrying out of a primary purpose of the institution; or
 - (ii) the work in connection with the business is mainly carried on by beneficiaries of the institution.”

Courts have, however, taken the view that the above two conditions for getting exemption apply only where business is carried on *on behalf of* a religious or charitable institution and not where the business itself is held upon trust, and that as such the income of such a business would still

* CIT vs. Walchand Diamond Jubilee Trust, (1958) 34 ITR, 228.

** J.K. Trusts Bombay vs C.I.T., (1957) 32 ITR, 535.

be entitled to exemption under the substantive part of Section 4(3) (i), despite non-fulfilment of the conditions set out in the proviso.*

Some recent judicial decisions** have also held that if the primary object of a trust was of a charitable nature, the fact that there was a provision in the trust deed that in carrying out the trust the needs of the relations and family members of the donor would be given priority, would not result in the trust being denied the exemption under Section 4(3) (i) of the Income-tax Act. Thus, a trust created by a person for the purpose of giving education, medical aid and monetary help for various other purposes, to the poor, may still enjoy exemption under Section 4(3) (i) of the Income-tax Act even if, by virtue of a clause in the trust deed, the trustees are asked to give preference to the poor relations of the donor and even if in so doing the entire income of the trust is spent only on the relations of the donor.

These loopholes require to be adequately plugged by proper amendments in the Acts on the following lines:—

- (a) The accounts of all charitable institutions, with the exception of those audited under the requirement of any other law or regulation, having an income of Rs. 5,000 or over, must be compulsorily audited and a certificate from the auditor in a form to be prescribed should be furnished to the assessing officer in support of its claim for exemption from tax.
- (b) A charitable trust carrying on a business which is not in the course of carrying out the primary object of the trust itself should not be entitled to the exemption under Section 4(3) (i) of the Income-tax Act and this should be made clear in the substantive part of the Section itself.
- (c) Where a trust deed contains a clause that the funds of the trust should also be utilised for the relations and family members of the donors or that in carrying out the charitable objects of the trust priority should be given to such relations or members, exemption should not be available under Section 4(3) (i) of the Income-tax Act, or under Section 5(1) (i) of the Wealth-tax Act.
- (d) If any charitable trust had invested, at any time during the previous year, in the shares or capital of an industrial or commercial undertaking, in which the donor was himself substantially interested, an amount more than five per cent. of the paid-up capital of that undertaking, then the dividends or share income from such investments should not be eligible for exemption and should be taxed in the hands of the trustees.
- (e) As regards the other incomes of the trust, they will be exempt if the conditions under Section 4(3) (i) of the Income-tax Act are fulfilled, but if more than 25 per cent. of such income of a trust is set apart for being spent subsequently for charitable purposes, the amount set apart in excess of 25 per cent. should be taxed in the year in which it is so set apart. The

* *Dharamvijaya Agencies Bombay Vs. C.I.T. Bombay I*, Income-tax Reference No. 69 of 1958.

** *Trustees of the Charity Fund Vs. C.I.T. Bombay*, (1959) 36 ITR, 512

Central Board of Revenue should, however, be empowered to increase this percentage in fit cases.

- (f) If on enquiries into the use to which the properties belonging to a charitable trust were being put to, the assessing officer found that they were being utilised (i) by the donor or his nominees or any of his family members or, (ii) by a trustee or his nominee or his family, the properties should not be allowed the exemption admissible under Section 5(1) (i) of the Wealth-tax Act, unless in the case of (ii) above, the occupation of the property by the trustee was necessary for carrying out the objects of the trust. The assessing officer should also ensure that gift-tax is recovered in respect of the properties enjoyed by such persons.

The amendments suggested above, are designed to ensure that while genuine public trusts of a charitable or religious character would continue to enjoy exemption as at present, trusts which are ostensibly for a charitable purpose but intended really to benefit, directly or indirectly, the donor's relations or business interests would cease to get the benefits of exemption envisaged in the direct taxes Acts.

(3) Under Section 10(2) (vii) of the Income-tax Act, if an assessee has sold his machinery or other assets and if the sale proceeds are more than the written down value of the asset, the excess upto the amount of the depreciation actually allowed is treated as profit of the year and subjected to tax. Some High Courts have held that such profits can be taxed only if the assessee was carrying on the business in the relevant previous year. Section 10(1) of the Income-tax Act should be amended so as to be consistent with the second proviso to sub-section (vii) of that Section, providing that even where the assessee has discontinued his business, profession or vocation, such profit would be treated as income and subjected to tax. The business expenses incurred after the closing of the business should also be allowed.

(4) Several witnesses pointed out to us that the existing provisions of Section 14(3) of the Income-tax Act, under which the profits of cooperative societies were exempt from tax, provided a wide loophole for avoidance of tax. Cooperative societies are now running transport services, controlling large industrial and commercial undertakings such as textiles, sugar etc., and their dealings are mostly with non-members. It was urged that exemption of such societies from payment of taxes was inequitable also, in that they were comparatively better placed in the matter of financial strength and competitive power than other concerns having the same kind of business activity but which did not enjoy any exemption from taxation. Our attention was drawn, in this connection, to the observation of the Punjab High Court in the case of a cooperative society that came up before it in reference, to the effect that it could not have been the intention "to place the cooperative society on a higher footing than an ordinary merchant or shopkeeper who would have to pay income-tax on profits gained from sale of sugar etc."*

Cooperative societies have been given exemption from tax in recognition of the fact that they are intended "to encourage thrift, self-help and

* Hoshiarpur Central Cooperative Bank Ltd., Vs. CIT Simla.
(1953) 24 ITR, 346, 353.

cooperation among agriculturists, artisans, and persons of small means". They are essentially for men of small means to enable them "to combine their resources and efforts in the promotion of the production, distribution or consumption of the goods or services in which they have a common interest."* Mutuality of interest is thus the fundamental principle of cooperation. This principle is, however, conspicuously absent in the types of societies referred to in the preceding paragraph.

While recommending enlargement of the tax concessions available to the cooperative societies, the Taxation Enquiry Commission recognised "the need for ensuring that these concessions are available only to genuine cooperative societies."** It pointed out certain basic principles of co-operation to be fulfilled by a genuine cooperative society. It recommended that a society whose total income exceeded Rs. 20,000 should furnish a certificate from the State Government to the effect that its constitution and working conformed to the tests suggested by it. It further suggested a procedure for withholding the tax concession from a society which was found to have had an unduly large proportion of the dealings with non-members, even if such a society had obtained the aforesaid certificate from the State Government.

We have given careful thought to this question. The concession was necessary in the earlier stages of economic development, but we think a stage has now been reached when the effect of the continuance of such a concession to industrial and transport cooperatives on the tax revenues of the country could not be ignored. We are, therefore, of the opinion that the provisions of Section 14(3) of the Income-tax Act need to be suitably modified so as to secure that the tax concessions are made available only to really genuine cooperative societies the dealings of which are predominantly confined to its members, and which fulfil the basic principles of cooperation mentioned by the Taxation Enquiry Commission in paragraph 68 of Chapter VIII of Volume II of its Report. *Taking all the aspects of the matter into consideration, we recommend that it should be specifically provided for in the Section itself that the exemption would not be available to those cooperative societies whose total income exceeds Rs. 20,000. We may mention here that the limit of Rs. 20,000 obtains even at present, under clause (iv) of Section 14(3) in respect of the exemption of income from interest on securities or from property.*

We may also point out that the suggestion made by us would not in any way discourage the growth of genuine cooperative institutions. We fully recognise that the cooperative form of organisation has an important place in the social and economic life of the country, and that its promotion should be assisted and encouraged by all reasonable means. The limit of Rs. 20,000 proposed by us for the grant of the exemption is sufficiently high to cover almost all genuine cooperative societies. Even if the income exceeds this figure, a cooperative industrial undertaking would still be exempt from tax, like any other industrial undertaking, on its profits upto six percent of the capital employed for the first five years, in accordance with Section 15C of the Income-tax Act. Under the provisions of subsection (4) of that Section, the shareholders will also be exempt from the payment of any tax on the dividends distributed as are

* Report of Taxation Enquiry Commission, Vol. II, Para 64, page 124.

** Report of the Taxation Enquiry Commission, Vol. II, para 68, page 127.

attributable to the profits of the undertaking exempted from tax. As in most of the State laws relating to cooperative Societies, there are statutory provisions restricting the distribution of the profits of cooperative societies to 6.25 per cent, the shareholders will not also be, in any way, adversely affected. *We feel therefore that the suggestion made by us, while helpful in checking the abuse of the tax concessions intended for genuine cooperative societies, would not interfere in any way with the growth of such institutions.*

(5) At present, under section 16(3) of the Income-tax Act, only income from assets transferred by husband to wife is includible in the husband's income, but there is no corresponding provision in respect of the inclusion of income from assets transferred by wife to the husband. *We consider that a similar provision covering cases of assets transferred by wife to the husband should also be made.* It should, however, be made clear that the personal income of the husband or wife should not be included. *A further amendment may also be made to this Section so as to cover transfers of assets to minor children by the mother.*

(6) At present, in a case where a father creates a trust for the benefit of his minor daughter with a stipulation that the income of the trust should be accumulated and added to the corpus and that the daughter should be entitled to receive the income only after attaining majority, it has been held by the Courts that the provisions of Section 16(3) (b) of the Income-tax Act do not apply as the income is not receivable by the trustees on behalf of the minor but is merely added to the corpus. *We recommend that the law should be modified so as to tax such income of the minors.* There may, however, be cases in which the shares of the beneficiaries are not definite and tax as applicable to an association of persons is charged. Such cases should be excluded.

(7) It has come to our notice that in certain instances, after transferring the ownership of a residential property to his wife or minor child, without adequate consideration, the transferor continues to reside in it along with the transferee. As under Section 9(2) of the Income-tax Act the assessable income of a owner-occupied residential property is limited to 10 per cent of the total income of the owner *viz.* the wife or the minor child who usually has much less income, there is escapement of proper tax liability. *This situation should be remedied by suitable amendment to Section 9(2) of the Income-tax Act.*

(8) Under the present law, assessee have to obtain a tax clearance certificate before they leave India. This certificate is with regard to the assessee's liability to Income-tax, Excess Profits Tax and Business Profits Tax but there is no mention of the other direct taxes which have been introduced recently. *Section 46A of the Income-tax Act should be amended so as to include liabilities under the Wealth-tax Act, Expenditure-tax Act and Gift-tax Act also.*

(9) *There is no justification for giving the marriage and children's allowance both to the husband and the wife where they are separately taxable. The law should be amended suitably.*

(10) At present only State Government companies, Local authorities or corporations are assessable to income-tax. *Any industrial or public utility undertaking run as a department of the State Government should also be subjected to tax and, for this purpose, provision should be made in law as envisaged in Article 289(2) of the Constitution.*

(11) There is no provision in the law at present to assess the income received after the cessation of practice or retirement or death of the assessee carrying on a profession, like Solicitors, Advocates, Doctors, Consulting Surveyors, Engineers, etc. *The law should be amended in such a way that even on the assessee's cessation of his vocation or retirement from the profession or death income received after such cessation, retirement or death would be taxed.* However, in cases where the contractual obligations of partnerships provide for the payment of commuted amounts to the heirs of the deceased partner, and if the taxes are payable by the surviving partners, there should be no tax on the commuted payments received by the deceased partners' estate or heirs. Commuted payments will not be allowed as a deduction from the income of the firm or surviving partners.

(12) There have been many instances where persons acquired companies which had sustained losses in earlier years, carried on profitable business through them and were able to reduce their tax liabilities by setting off the earlier losses of the companies when the shares were held by different persons. *To get over this position, we endorse the recommendations of the Taxation Enquiry Commission contained in para 73 of Chapter IV of Volume II of its Report to the effect that in the case of companies in which the public are not substantially interested, such set off of losses against subsequent profits should be allowed only if the shareholders in the year in which the income is earned are substantially the same as those in the years in which the losses were incurred.*

PUBLICITY

7.82. While examining the causes for tax evasion, we referred to the secrecy provisions of the direct taxes Acts, and pointed out that, in as much as the pressure of public opinion was a major deterrent against any offence, the secrecy provisions could be somewhat relaxed. In this connection, we considered whether information regarding the declared or assessed incomes, Wealth, etc. of all taxpayers should be made available to the public after the assessments have been completed. Weighty reasons, both for and against the proposal, have been advanced. It has been urged by many important witnesses that publication of information about declared and assessed incomes would be the most effective method of creating public opinion against evasion and avoidance of tax. The taxpayer's relations, friends, neighbours as well as his business rivals and employees are likely to be in the know of the approximate amount of his income, wealth etc. and normally a person would hesitate to understate them for tax purposes, if he knew that it would be published and be seen by these people. In this connection, it was pointed out that the publication of weekly lists of import and export licences by Government has had a very healthy effect. Not only was it an effective answer to the complaints previously made about favouritism and corruption but also, if any person had got a licence by giving wrong information, he was immediately exposed. The authorities themselves may not be in the know of all the facts relating to a particular person but his business rivals are, and that is an effective check.

7.83. The main argument urged against the proposal is that it will be an unjustifiable intrusion into one's privacy and that it may encourage black-mailing and even slandering of honest citizens. We do not see how publication of the figures relating to the income, wealth etc. of a person

shown by him in his return would lead to an intrusion into his private affairs. Payment of the taxes due to the State is not the concern of the individual taxpayer alone; it concerns the Nation as a whole. Moreover, if an assessee has declared his income or assets correctly, there is no reason at all why he should be afraid of any attempt at blackmailing him. It was also said by some witnesses that as the 'income' or 'wealth' for assessment purposes was not the same as it was understood in commercial parlance, the publication of the figures of the former might lead to much uninformed criticism. Here, too, we feel that the apprehension somewhat unjustified, because persons who would normally be interested in the published figures, could be expected to be aware of this distinction and not draw unwarranted inferences. Still another argument advanced is that the income or wealth assessed may be modified in appeal and it will not, therefore, be correct to publish the figures until the assessments have become final, and that by this time the very value of the publication of the figures would be lost. However, as the proposal relates to the publication of only declared income, wealth etc., this argument does not hold good. Another incidental advantage in the publication of declared incomes could be that the publication of the figures will not have to wait for the assessment proceedings to be finalised.

7.84. This question was also considered by the Taxation Enquiry Commission. It pointed out that the principle underlying the Section was that an assessee should "come forward with a full and true disclosure of all the relevant facts within his knowledge with the assurance that any statement made by him would not be subsequently used against him".* It also pointed out that an Income-tax assessment necessarily involved the detailed scrutiny of an assessee's transactions and that it was necessary to preserve the confidential nature of these transactions. While we agree that it is necessary to preserve the confidential nature of the details of an assessee's transactions, we are of the opinion that the principle should not apply with the same force to the income, wealth etc. declared by the assessee himself in the return.

7.85. It is interesting to note that a practice of publishing names of taxpayers with assessed incomes is already being followed in several countries. In Sweden, though the income-tax law itself does not permit the publication, every citizen is required to declare his income when he gets himself registered under the National Registration Law which is necessary for social security purposes. This register is kept open for free inspection by the members of the public during specified hours and even private publishers are extracting this information from the Registers and publishing lists of persons with incomes for the purposes of trade-directory, advertisement, etc. In Norway, the figures of capital and income of the taxpayers are made available for public inspection for a period of four weeks. In Italy, the published material includes the declared income as well as the official estimates so that the public could know the wide gap between the two figures. It is stated that this method of publicity had already resulted in a considerable increase in the declared incomes. The latest country to follow this procedure is France, which has recently decided, as an anti-evasion measure, to publish a list of taxpayers and the amounts of tax they pay. This list is made available for inspection in every French Town Hall for anyone who wishes to consult it.

* Report of Taxation Enquiry Commission, Vol. II, para 40. page 203.

7.86. After a careful examination of the pros and cons of the proposal, urged inside and outside the committee, we are of the opinion that evasion could be effectively checked by making the information available to the public. Two possible methods for giving effect to this decision were considered by us viz.—

- (i) communication to any member of the public, on the payment of a specified fee, the amount of income, wealth etc. declared by a person in his return;
- (ii) publication annually in a printed booklet form the names, addresses and declared income, wealth, expenditure etc. of either all assesseees or those above a certain limit.

We leave it to the Government to adopt either of the two methods suggested above. The necessary procedure to be followed may also be prescribed.

7.87. Another suggestion examined by us was whether the names of those penalised for concealment of income, wealth, expenditure and gift taxes should be published. A majority of the witnesses, including certain chambers of commerce, had expressed themselves in favour of this proposal. There is a definite advantage in publishing such names, as the loss caused to the name and reputation of a delinquent assessee is likely to serve as a more deterrent punishment than the penalty itself. There is no reason why persons who have defrauded the State of large sums of revenue should be placed on a better footing than persons who have defrauded private parties. In a sense, a crime against the State is even more serious and there is no justification for showing undue consideration for the feelings of such persons.

7.88. It may be mentioned that this point was considered by the Indian Taxation Enquiry Committee (Todhunter Committee) of 1924-25. Even though it emphasised the importance of the maintenance of secrecy in income-tax proceedings, it recommended that—

“the adoption of the practice of publishing in the annual reports a list of persons penalised for income-tax offences would possibly operate as a deterrent to the commission of such offences and may be tried”.*

While the Income-tax Investigation Commission came to the conclusion that there was much to be said in favour of this proposal, the Taxation Enquiry Commission thought that, because of the long time lag, very little useful purpose would be served by such publication. We may mention that in Australia, a list of the persons penalised for income-tax offences is published annually and, in the United States of America also, full publicity is given to the discovery of tax frauds and the punishment meted out to the evaders. *We have considered the matter carefully and come to the conclusion that, in view of the deterrent effect it would have on attempts at evasion, the names of all persons in whose cases penalties have been levied for Rs. 5,000 or more for the concealment of income, wealth, expenditure etc. should be published by the Commissioners, in the gazette as well as in the press, giving details of their names, addresses and amounts of penalties. If the assessee concerned is a company or*

*Report of Indian Taxation Enquiry Committee (1924-25),
Para 250, page 213.

firm, the names of all the directors of the company or partners of the firm, as the case may be, should be published unless it has been established that only a particular director or partner was responsible for the evasion. The publication should be made only after the penalty has become final in appeal and reference. We recommend, however, that the Central Board of Revenue should have discretion to withhold the publication of names in suitable cases, but the number of cases in which such information was withheld, and the reasons therefor, should be given in the annual administration report but without mentioning the names of such persons. This provision is necessary as, in its absence, no assessee is likely to agree to pay a penalty of Rs. 5,000 or more and, in order to avoid publication of the levy of penalty, would contest the levy tooth and nail up to the Supreme Court. We are further of the view that cases in which prosecutions for tax fraud were successful should also be given similar publicity.

AROUSING PUBLIC CONSCIENCE

7.39. The question of arousing public conscience against tax evasion has, of late, gained much importance. The general feeling appears to be that, so long as wealthy individuals who are known to be tax evaders continue to occupy an important position in society, business and public life, there is no possibility of arousing public conscience against tax evasion. The attitude of the public is generally one of resentment, but largely ineffective at present, against the large scale evasion. We consider that, in the ultimate analysis, tax evasion could be eliminated only by arousing public conscience against tax evasion and tax evaders. Some of the suggestions which we have made earlier, such as, stiffer penalties and prosecutions in suitable cases, publication of the declared incomes and assets, publication of names of tax offenders, would themselves create the necessary climate for the arousing of public conscience. In addition, the following measures may also be useful:—

- (i) People should be educated with regard to the real object of the collection of direct taxes, through press, radio and films.
- (ii) Steps should be taken to convince the taxpayers that the money collected through taxes is not spent wastefully but put to proper use.
- (iii) No official patronage or recognition or awards should be given to persons who have been penalised for concealment or in whose case prosecution proceedings have been taken. Such a person should not be allowed to become a member of any Committee or Commission appointed by Government. We were impressed, in this connection by the evidence given by a retired Commissioner of Income-tax that, even under the British regime, Commissioners of Income-tax used to be consulted before awarding titles etc. and that in one case the conferment of knighthood on a person was withheld because, at the last minute, it was found that the person concerned was a tax evader.
- (iv) Tax evaders should be strictly dealt with and brought to book by the Department in future so that the widely-held feeling in the minds of the public that evasion pays and that evaders are treated lightly is removed. Prosecution proceedings should be launched wherever necessary.

- (v) The co-operation of the chambers of commerce and other professional bodies such as bar associations, medical associations etc. should be enlisted in the matter of wiping out evasion.
- (vi) A special drive should be undertaken to rouse public conscience by enlisting the co-operation of leaders in the various walks of life.

CONCLUSION

7.90. From the discussion in the preceding paragraphs of this Chapter, it should have become abundantly clear that the problem of avoidance and evasion constitutes a challenge to, and becomes the responsibility of, not the Administration alone but all the three branches of Government, viz., the legislature, the executive and the judiciary. It would be appropriate to close this discussion with a quotation from President Roosevelt's message to the 75th Congress. Pointing out that, when the legitimate revenues of the State are attacked, it constitutes an attack on the whole structure of government, he added—

"The three great branches of the Government have a joint concern in this situation. First, it is the duty of the Congress to remove new loopholes devised by attorneys for clients willing to take an unethical advantage of society and their own Government. Second, it is the duty of the executive branch of the Government to collect taxes, to investigate full all questionable cases, to prosecute where wrong has been done, and to make recommendations for closing loopholes. Third, it is the duty of the courts to give full consideration to all the evidence which points to an objective of evasion on the part of the taxpayer".^{*}

^{*} Hearings before the Joint Committee on Tax Evasion and Avoidance (1937), p. 6.

CHAPTER 8

ADMINISTRATION

INTRODUCTORY

8.1 We now proceed to discuss the organisation necessary for securing a proper and efficient administration of the direct taxes laws. The views expressed both by official and non-official witnesses on the administrative machinery give sufficient indication that the Income-tax Department needs to be strengthened and revitalised for improving its efficiency. In order to be really effective, the administrative machinery requires not only to be properly organised but must also be adequately equipped with the necessary personnel and material. Our suggestions contained in this Chapter have been made with this end in view.

CENTRAL BOARD OF REVENUE

8.2 The present organisational set up of the Department is given in Appendices VII to IX. At its apex is the Central Board of Revenue which is responsible for administration of the various direct and indirect central revenue laws in the country. The Board exercises overall supervision and control over the several administrative and subordinate authorities functioning under the various statutes. Though the Board of Inland Revenue, which preceded the Central Board of Revenue established under a Central Statute in 1924, was concerned only with the administration of the Income-tax Act, the Board as at present constituted administers as many as fourteen Acts relating to both direct and indirect taxes. Of these, income-tax, customs and central excise provide the bulk of the revenues and are the main tax laws administered under the aegis of the Board. The administration of indirect taxes was combined with that of direct taxes, in the hands of one common Board, on the recommendations of the Indian Retrenchment Committee, 1922-23. The recent introduction of the various new direct taxes viz., estate duty, wealth-tax, expenditure-tax and gift-tax, under the integrated tax structure and the expansion of the field of central excise levies have considerably added to the volume of work which the Board has to handle as the apex of the revenue collecting machinery. Apart from the fact that administration of tax enactments presents technical and complicated problems of facts and law, the vast organisation of the various departments under the Board can be gauged from the fact that the total number of sanctioned staff in respect to them is 56,704 at present. The total tax revenues of the Government under both direct and indirect taxes increased from Rs. 71 crores in 1923-24 to Rs. 82 crores in 1938-39 to Rs. 385 crores in 1948-49 and to Rs. 640 crores in 1958-59. The budget estimates for the current year, 1955-60, amount to Rs. 701 crores

8.3. Besides exercising general administrative and executive control under the various central revenue laws, the Central Board of Revenue
Functions also functions as the Department of Revenue
of the Government of India. In the latter
capacity, it advises the Government on fiscal matters and also exercises

such powers and performs such functions as are enjoined on the Central Government by the various tax laws. In order to enable the Board to function in this dual capacity, the Chairman, Members and Officers of the Board have been given *ex-officio* status in the Central Secretariat set up. As such, they hold the posts of Additional, Joint, Deputy and Under Secretaries to the Government of India, according to their respective grade of offices in the Board. Thus the administrative functions of the Central Board of Revenue and the Secretariat duties of the Department of Revenue have been combined in the same persons.

8.4. There has been criticism of this functioning of the Central Board of Revenue in dual capacity. Although the Board was created with the object of relieving the Secretariat of the Government of India of its detailed administrative functions in regard to the collection of revenue, it was pointed out that it had been functioning more or less as a Government Secretariat and hence the very purpose of establishing it as a purely administrative body responsible for the implementation of the tax laws of the Government **had been largely defeated**. The Act constituting the Board contemplated that it should work subject to the control of the Central Government. The various revenue laws administered by the Board also clearly specify certain powers to be exercised only by the Central Government. However, in practice, the Board itself acts on behalf of the Central Government also, thus combining in itself both the functions of policy making and its implementation. It was urged in this connection that it was not correct in principle for an administrative body to deal with policy matters.

*8.5. We have carefully considered this question and we do not feel that the criticism made is well-founded or justified. From the very beginning, the Central Board of Revenue has been functioning in dual capacity, though the Secretariat functions were rather limited in the initial stages. *In our opinion, it is neither practicable nor desirable to divorce administration entirely from policy making.* There is no denying the fact that policy making divorced of administrative responsibility would tend to become theoretical and unrealistic. It is but proper, therefore, that the Government should be assisted by experienced senior administrators in the various branches of tax laws so that the problems and difficulties of implementation are given due weight in the formulation of policy. Moreover, separation of the Secretariat functions will only result in establishing another parallel organisation with almost similar functions and cause delays, lack of co-ordination and an increase in the cost of administration. Experience regarding certain other Ministries has shown that such secretariat organisations inevitably tend to grow and ultimately lead to the creation of parallel posts in the Secretariat at all levels. Even if a separation of functions is effected, the Board will have to continue advising the Government on Fiscal policy, examining fresh proposals of taxation and suggesting necessary modification in the existing Statutes. The Board of Inland Revenue of the United Kingdom, on the lines of which the Central Board of Revenue was constituted, though primarily concerned with the general care and management of the Inland revenues, also deals with policy matters as evidenced from the following observations:

"The most concise definition would be—advise the Ministers on questions of taxation policy, conducting necessary Finance

Bill business, deciding questions of principle raised by the public and co-ordination of the various branches."*

In India too, the Railway Board has, right from its inception in 1905, been functioning as the Central Government in the Ministry of Railways (formerly Department of Railways). The recent decision of the Government to constitute a Post & Telegraph Board on the same lines clearly shows the advantages obtaining in such statutory Boards functioning also as Departments of the Central Government. *For all these reasons we hold that the Central Board of Revenue should continue to function as the Department of Revenue.*

8.6. A suggestion was made to us that the administration of direct taxes should be separated from that of indirect taxes as is obtaining in U.K. and U.S.A. It was pointed out that the quantum of work which was comparatively less in the beginning and could be managed by a small Board consisting of two Members, had increased tremendously since then, necessitating increase in the number of Members and that these facts amply justified the formation of a separate direct taxes Board. Statistics show that the number of assesseees on the registers of the Income-tax Department increased from 2,86,438 in 1923-24 to 5,21,845 in 1948-49 and rose further to 9,82,277 as on 1st April 1959. The collection of direct taxes which stood at about Rs. 20 crores in 1923-24 as well as in 1938-39 increased to Rs. 203 crores in 1948-49 and further to Rs. 236 crores in the financial year 1958-59. The budget estimates for the current year 1959-60 amount to Rs. 243 crores. The staff sanctioned for the administration of direct taxes totals to 20,246 as on 1st April 1959 as compared with about 4,500 in 1947 and, of course, very much less in earlier years. The adoption of an integrated tax structure by the introduction of the various new direct taxes laws which have also to be administered by the Income-tax Department has considerably added to the volume of work. There has also been a considerable increase in the field of indirect taxation, the revenues collected as well as the personnel employed in the Customs and Central Excise Departments.

8.7. Beside the Chairman, the Central Board of Revenue, as at present constituted, has two Members in charge of direct taxes and three to administer the indirect taxes. Each Member is in charge of a particular wing or wings of direct or indirect taxes and discharges on his individual responsibility, specific functions entrusted to him. The laws relating to direct and indirect taxes are quite different in nature and each category has its own technicalities and complications.

8.8. In its 49th Report dated 28th March 1959, the Estimates Committee (1958-59) of the Parliament has stated that "The functions of the Central Board of Revenue are largely discharged by individual Members of the Board to whom specific functions are entrusted.....The Members meet together as a Board only for administrative matters for deciding points of common interest, such as, recruitment, promotion, etc." The Estimates Committee, while discussing this aspect of the matter, has also observed that "*In any case they fail to appreciate the necessity of forming a Board unless Members of the Board function jointly in certain respects*". *We are in full agreement with the above observation. While under clearly defined rules, it should be possible for the Members to act*

*Report of the Committee appointed to review the Organisation and Administrative Methods of the Inland Revenue Department of U.K., 1950, page 25, para 92.

on behalf of the Board, individually, in respect of day-to-day matters specifically allotted to them, they should act jointly on important technical and administrative problems. The direct and indirect taxes laws have very few common points and in view of the varying problems of a complicated nature arising under the different enactments, joint functioning of the Board may not prove very useful. It is seen that in the United Kingdom the Department of Customs has from the very beginning been administered by a separate Board, whilst that of Central Excise, which was initially working separately and was later on combined with Income-tax under the Board of Inland Revenue, was transferred in 1909 to the Board for Customs. Thus, the Board of Inland Revenue has, for the past 50 years, been mainly in charge of the administration of only the direct taxes laws. This clearly indicates the advantage of having separate Boards for direct and indirect taxes. In India, the Customs and Central Excise Departments have been merged into one Department with a common service cadre and personnel. Thus in effect, there are two separate and distinct Wings of administration of direct and indirect taxes. We feel that it will facilitate the joint functioning of the Board, to a large extent, if the administration of the direct taxes and that of indirect taxes are entrusted to two separate Boards. This will result in a more efficient administration of the different tax laws. However, as the new direct taxes have been introduced recently and the bifurcation of the present combined Board might involve additional expenditure, we do not recommend the immediate formation of two separate Boards for direct and indirect taxes. We suggest that for the present there should be two distinct Wings of direct and indirect taxes in the Central Board of Revenue with a common Chairman. The Chairman should co-ordinate the functions of the various Members, preside over the meetings of each of the Wings as well as over their joint meetings and be responsible for the efficient working of the Board as a whole. In the absence of the Chairman, the senior most Member of each of the Wings should preside and conduct the deliberations at their separate meetings. We believe that this administrative bifurcation will result in better discharge of the joint responsibility of the Board and improved Co-ordination of work as between the Members. After examining the working of the two separate wings as suggested by us, Government may consider the feasibility of constituting separate Boards for direct and indirect taxes. ...

8.9. We consider that the Members of the Board should function jointly while taking important decisions such as those involving interpretation of fiscal statutes, decisions on appeals, write off of arrears and settlement of cases above a certain limit, and on matters of administrative policy. We suggest that a list of functions of the Central Board of Revenue where the Members should function jointly and individually may be drawn up and strictly adhered to. We agree with the recommendations of the Estimates Committee that there should not be frequent changes in the status of the post of the Chairman or in the composition of the Board.

8.10. At present there is only one Secretary common to both the Department of Economic Affairs and the Department of Revenue. In the present context of planning and vast economic development in India, the Secretary of the Economic Affairs Department has already his hands too full with duties and responsibilities of a very onerous nature.

Chairman When one is so preoccupied with the problems relating to the Economic Affairs Department, it is difficult for him to pay adequate attention to the complicated affairs and problems of the Department of Revenue. The importance of revenue in the present times necessitates, in our opinion, a whole-time Secretary for the Department of Revenue. We, therefore, suggest that there should be a separate

Secretary for the Department of Revenue and this post and that of the Chairman of the Central Board of Revenue should be combined. There should be, however, periodical joint meetings between the two Secretaries of the Departments of Economic Affairs and Revenue with a view to co-ordinating the policies and related problems of their respective Departments.

8.11. As stated earlier the administration of the direct taxes is at present looked after by two Members of the Central Board of Revenue. Upto 1953 there was only one Member in charge of income-tax and the two allied taxes viz., Excess Profits Tax and Business Profits Tax. With the introduction of estate duty in 1953, another Member was then added to deal with estate duty matters as well as to share a portion of the increased work relating to income-tax. Even though with the introduction of the integrated tax structure three new direct taxes viz., wealth-tax, expenditure-tax and gift-tax have been added, there has been no further addition to the number of Members in the Board dealing with direct taxes. There is a general feeling that the two Members are very much over-worked with the result that they are not able to devote full attention to all matters coming up before them. The increase in the volume of work and its complexity leave very little time to the Members to keep in constant and personal touch with administrative and executive units in the field or with representatives of commercial bodies and the tax-paying public. As already stated, the direct taxes administration employs at present over 20,000 persons spread throughout the country. The success of administration, particularly in the field of revenue, depends on proper organisation and control, the maintenance of the highest standards of integrity in the service and the establishment of good public relations. *All these require the full time attention of a senior officer and we, therefore, suggest that there should be one more Member in the Board to look after the general administrative and organisational matters of the direct taxes.* There should not, however, be any addition to the Board's secretariat staff consequent on the appointment of this Member.

8.12. There will thus be three Members in charge of the administration of direct taxes. As regards the distribution of work amongst them, we suggest that one of them may be in charge of the technical and policy matters relating to income-tax, the other may look after such matters relating to the other direct taxes and the third may see to the general administrative and organisational matters including vigilance, public relations, training, statistics, research and publications. *It should be laid down that each Member can function independently on behalf of the Board in respect of the specific work allotted to him and that all orders passed by him should be treated as orders of the Board. In respect of appeals, however, it should be provided that at least two Members of the Board should hear them jointly. As we have recommended in the Chapter on Collection and Recovery applications for settlement, write off, etc. should be dealt with by the Chairman and two Members acting jointly. On matters of administrative policy as well as those relating to promotions and postings of officers, all the three Members along with the Chairman should take a joint decision.*

8.13. It was represented to us that the rightful aspirations of the personnel of the Department in rising to the highest rung of the ladder in the administrative set up could not be realised as the Members of the Central Board of Revenue were generally appointed from amongst the I.C.S. or Pool Officers. It was pointed out that this was not the position in other Services like Railways, Posts & Telegraphs, etc. and there the

senior departmental persons were appointed as members of their respective Boards. We find that as on 31st October 1959, two of the three Members, who were in charge of indirect taxes in the Central Board of Revenue were senior officers of the Department of Central Excise and Customs. It is seen that except in one or two cases and that too for short periods, no senior officer belonging to the Income-tax Department has been appointed to the Board to hold charge of direct taxes. We agree that the legitimate aspirations of the departmental personnel and their due rights should be safeguarded. At present officers of the Department are recruited from the combined competitive examination held by the Union Public Service Commission, and we are confident that senior officers who have to their credit long and meritorious service would be well-fitted to man the posts of Members of the Board. *We, therefore, suggest that at least half the Members of the Board dealing with direct taxes should be selected from amongst the officers of the Department.* This will not, of course, preclude the Government from appointing selected Pool Officers who will bring a fresh outlook and varied administrative experience to the Board. *We agree with the recommendations of the Estimates Committee that an opportunity should be provided for introducing new blood and fresh outlook in the Board from time to time and hence no person should generally stay as a Member for more than five years.* This restriction need not be observed rigidly in all cases and suitable adjustments may be made as required for administrative convenience.

8.14. In this connection, we welcome the policy of the Government in constituting a Central Administrative Cadre of Pool of Officers from different services. In the past, however, the number of officers selected from Income-tax Department for the Pool was negligibly small compared with the total number of candidates available. The Class I cadre of the Income-tax Department is larger than that of any other Central Class I service but their share of the Pool posts is one of the lowest. *We, therefore, wish to emphasise that the recruitment of the officers of the Income-tax Department to the Central Pool should be increased considerably and greater facilities made available to them to acquire experience of other work.*

8.15. The Secretariat of the Central Board of Revenue consists of administrative and technical wings. *In view of the complicated nature of problems in both the wings it is but proper that officers and other staff of the Department who have field experience should, as far as possible, man these posts.* Posts of Assistants in the technical section should also be filled by selected Class III personnel of the Department. In dealing with this aspect of the problem, the Estimates Committee too has opined that "Since the Central Board of Revenue is the co-ordinating agency for all the revenue departments, it would be desirable to have persons with first-hand knowledge of the working of the different departments under the Central Board of Revenue at all levels. *There should also be a periodical exchange of officers and staff between the Board and the field offices.*"

8.16. The Central Board of Revenue has constantly to deal with questions of law arising out of the administration and interpretation of the provisions of the different tax statutes. For this purpose it often seeks expert legal advice from the Ministry of Law. The various tax matters before the Supreme Court are at present handled by the Central Law Agency of that Ministry. It

was suggested by some witnesses that instead of this arrangement it would be more advantageous to have a self-contained legal branch under the Board itself as was obtained in U.K. and U.S.A. In our opinion, a complete switch over is not necessary at present and will lead to considerable additional expenditure. We, however, feel that in order to provide the Board with expert legal advice in day-to-day work, a senior solicitor or advocate with adequate experience in direct taxes matters should be appointed as Legal Advisor in the office of the Board and given appropriate status and pay. This will not, however, preclude the Board from consulting the Ministry of Law and obtaining its, authoritative opinion whenever so deemed necessary. The appointment of this officer will eliminate delays in disposal, help in improving representation of the Department's view point in appellate and reference matters before the Tribunal, High Courts and the Supreme Court and avoid too many references to the Ministry of Law.

8.17. While on this question we wish to refer to the representation made by some departmental witnesses that besides there being delay in the sanctioning of Standing and Special Counsel for the Department for representation on tax matters, the Government were reluctant to pay the high fees usually charged by experienced and leading members of the Bar. As a result of this the department's case on legal issues was not always as effectively presented as it should be before the various Courts of Law. As the decisions on revenue matters affect not only the particular case but also have a bearing on a number of similar cases involving the same points, we desire to emphasise that there should be no false economy in this matter and that the best available legal representation should be secured for the Department. The extra expenditure involved will be met more than several times by the resultant gain to revenue.

DIRECTORATES

8.18. At present the following three Directorates are attached to the Central Board of Revenue:—

- (i) Directorate of Inspection (Income-tax).
- (ii) Directorate of Inspection (Investigation).
- (iii) Directorate of Inspection (Special Investigation).

These Directorates assist the Board in the supervision, control and co-ordination of the administration of income-tax and other direct taxes. The Directorate of Inspection (Income-tax) which was set up in 1940 covers a wide and varied field of activities. It examines the inspection reports of the Inspecting Assistant Commissioners and the Commissioners of Income-tax on the work of the Income-tax Officers in their respective charges with a view to judging the quality of the assessment work and effecting improvements wherever necessary. It also conducts departmental examinations for the various categories of staff, deals with technical problems, organisation and methods of work and other establishment matters including preparation of certain statistics. The magnitude of the task allotted to this Directorate is such that it is not possible, in our view, for one Director to discharge all the duties efficiently. In our opinion, one of the important duties of the Directorate should be to carry out inspection of offices of the Commissioners as well as Assistant Commissioners. It should also test-check the inspection work done by Inspecting Assistant Commissioners. If inspection is to be done on the lines suggested by us, a Directorate, exclusively for inspection, would be fully justified.

8.19. We find that the present arrangements for collection and compilation of statistics suffer from several deficiencies and require improvements. This work, which is at present spread over and lacks co-ordination, requires full time attention under one unit. The research aspect of such an important department like that of the direct taxes is also not being properly looked into at present. We, therefore, suggest that the other items of work done by the present Directorate of Inspection, viz., collection and compilation of statistics, conducting of departmental examinations, training, research in the field of direct taxes as well as publication of manuals, etc., should be transferred to a new Directorate.

8.20. The vigilance work of the Department, which is now in the charge of Directorate of Inspection (Investigation), has not received the attention it deserves because of the work of investigation entrusted to this Directorate. From the statistics furnished by the Board given in paragraph 8.23 below, we find that a considerable number of departmental proceedings against the gazetted and non-gazetted officers is pending disposal and a good portion of it for more than a year. We have also commented in the Chapter on Evasion and Avoidance that no intelligence work on its own, has been done by the Directorate of Inspection (Investigation) and that it normally waits for information to come to it rather than itself take the initiative in getting the information. On careful examination, we feel that this Directorate should also be split up into two, namely, a Directorate of Vigilance and a Directorate of Investigation and Intelligence. We understand that the Directorate of Inspection (Special Investigation) will shortly cease to function after it has completed the task allotted to it. Thus, as a result of the rationalization of the functions and re-organization of the Directorates, there will be the following four Directorates to work under the supervision and control of the Central Board of Revenue:—

- (i) Directorate of Inspection;
- (ii) Directorate of Investigation and Intelligence;
- (iii) Directorate of Vigilance; and
- (iv) Directorate of Training, Statistics, Research and Publications.

8.21. The functions of the Directorate of Inspection should be to carry out administrative inspections of the offices of the Commissioners and Inspecting Assistant Commissioners of Income-tax including the 'group charges'. It should lay down the general policy for inspection of the work of assessing officers by the Inspecting Assistant Commissioners, examine and review their inspection reports and also testcheck them from time to time through personal inspections. It should invite the attention of the field officers to the defects observed in the inspections carried out and suggest remedial measures to overcome them. The Directorate should also have a 'special cell' to review continuously the organisation and methods of working of the Department and suggest necessary measures for improving them.

8.22. In the Chapter on Evasion and Avoidance we have discussed the functions and duties of the Directorate of Investigation and Intelligence. This Directorate will have attached to it six experienced Assistant Commissioners working as Specialists to deal with tax problems in respect of specified important industries and trades like textiles, iron and steel, sugar, cement, mining, etc.

8.23. It is of the utmost importance that the revenue administration should maintain the highest standards of morality and integrity. Besides keeping a constant vigil over the large number of personnel at different levels, the Directorate of Vigilance should see that cases of complaints and disciplinary proceedings are expeditiously dealt with and ensure that dishonest officials are properly brought to book. As observed earlier, the vigilance work has not been handled by the Department as expeditiously as it should have been. The following figures furnished to us by the Central Board of Revenue show the volume of vigilance work which is bound to increase as a result of a stricter watch and enquiry by the Directorate on its own, in addition to acting on complaints received from outside:

TABLE I—DISPOSAL OF COMPLAINTS AND DEPARTMENTAL PROCEEDINGS DURING THE LAST THREE YEARS

	1956-57	1957-58	1958-59
	1	2	3
A. Complaints.			
(i) No. of complaints for disposal—			
(a) brought forward	100	96	128
(b) current	153	261	238
TOTAL	253	357	366
(ii) No. disposed of by—			
(a) filing as baseless without enquiry	55	63	89
(b) filing as baseless after enquiry	80	86	122
(c) initiating departmental proceedings	23	78	31
(d) taking other action	2	2	..
TOTAL	162	229	242
(iii) Balance ; (i) minus (ii) pending for—			
(a) less than one year	55	65	98
(b) one year and more	41	63	26
TOTAL	96	128	124
B. Departmental proceedings			
(i) No. of departmental proceedings for disposal—			
(a) brought forward	14	32	78
(b) current	25	78	31
TOTAL	39	110	109
(ii) No. finalised resulting in—			
(a) dismissal or removal from service	3	8	9
(b) reduction	2	3	5
(c) withholding of increment or promotion	1	10	12
(d) other action	1	11	29
TOTAL	7	32	55
(iii) Balance (i) minus (ii) pending for—			
(a) less than one year	25	41	30
(b) one year and more	7	37	24
TOTAL	32	78	54

It is very essential that the complaints remaining to be inquired into and cases in which disciplinary proceedings are still pending are disposed of quickly. Besides looking into the complaints received from the public it is equally important that the Department should itself initiate inquiries and otherwise keep a constant vigil over the personnel of the Department. We have, therefore, suggested the formation of a separate Directorate of Vigilance. This Directorate should also examine and record the wealth statements of the gazetted officers of the Department. It should keep a proper watch over the standards of living of the officials at all levels with a view to detecting corruption and other malpractices. We are dealing in later paragraphs the extent and causes of malpractices and the steps required to be taken for preventing them.

8.24. We are discussing later on in this Chapter the question of proper training which is required to be imparted to the Departmental personnel. *Besides looking after the work of the Training College for the gazetted officers, this Directorate will also co-ordinate the training programmes of the non-gazetted staff. It will be responsible for recruitment of personnel at all levels and for conducting the departmental examinations in respect of both the gazetted and non-gazetted staff.* The Taxation Enquiry Commission had pointed out several deficiencies in the statistical material collected by the Departmental and had suggested an overhauling of the statistical organisation. We find that certain changes in the methods of compilation and presentation of the statistics have since been made by the Central Board of Revenue. However, as stated by us earlier, the entire system of collecting and compiling of necessary statistics is required to be rationalised and entrusted to one single organisation. We ourselves experienced considerable difficulty in obtaining the relevant statistics required for the purpose of our enquiry. Statistics are an important means of administrative control and policy making and it is essential that they should be accurate, complete, properly compiled and correctly interpreted. We understand that though in the past the statistics compiled by the Department were being published and made available to the public, this is not being done at present. This state of affairs is unsatisfactory and has been adversely commented upon by various organisations. The statistical data should be made available freely and promptly to the public so that it may not lose its importance and significance. The new Directorate which we have suggested should prescribe the form for reporting statistical information by the subordinate offices and test-check the accuracy and completeness of the data furnished. *It should compile all the statistical information relating to the administration of direct taxes and interpret it for the purposes of budgetary policy and administrative control. The present office of the Statistician (Income-tax) should be merged with the proposed Directorate.* This Directorate should also assess the workload of the Department from time to time and determine the requirements of the officers and staff for the entire administration.

8.25. The Central Board of Revenue has the responsibility for advising the Government on various matters of tax policy. In order to do so, it is necessary for it to study and analyse the various problems arising in the administration of the direct taxes, the effect of the important changes in the law, the impact of direct taxes on the economic life of the country and various other aspects of the tax structure as a whole. At present there is a small 'Research Wing' in the Directorate of Inspection (Income-tax). *In our opinion, proper and extensive research study in tax matters should be undertaken by the Directorate proposed by us to be in charge*

of training, statistics, research and publications. A 'Tax Research Wing' has recently been set up in the Department of Economic Affairs for undertaking studies of the tax policies of the Government as a whole. We suggest that there should be proper co-ordination and liaison between the studies undertaken by this Unit and the research organisation of this Directorate. This Directorate should also be in charge of the publication of tax literature, books and manuals, bulletins and journals, etc., which we have dealt with at length in the Chapter on Public Relations.

8.26. Another important point to which we have to draw particular attention is the absence of an annual report of the administration of the direct taxes. We understand that an annual report used to be published by the Department several years ago but has since been discontinued, presumably as a measure of economy. The Department, at present, prepares only certain revenue statistics compiled by the Statistician (Income-tax) and cyclostyled copies of these are sent to the Chambers of Commerce and other organisations but they are not made freely available to the public. In our opinion, it is very important that the public should be provided with precise and comprehensive information relating to the administration of the direct taxes from year to year. This will enable the interested members of the public to appreciate the achievements and difficulties of the Department and thus help in minimising uninformed criticism. It will give an idea of the problems which the Department has had to face and the steps taken to tackle them. It will also provide useful information for analysing and interpreting the trends in national economy, the impact of various taxes on the different sectors and other relevant data. The Inland Revenue Department of the United Kingdom has been publishing an annual report of its administration for more than a century and these reports are formally presented to the Parliament as well. We do not see why a similar practice be not followed by the tax administration in India. We therefore, recommend that an Annual Administration Report should be published by the Department and laid on the table of the Parliament. This report should include information on the salient features of the Administration during the year, important changes effected in the direct taxes laws, rules and regulations, steps taken for checking tax evasion and the results achieved. It should also give statistical information about the number of taxpayers in the different income groups and according to various sources of income, the number of assessments completed and pending, and the taxes levied, collected and outstanding. It should contain statistical information with regard to the number of new assessee brought on the list, disposal of appeals and references and tax relief given, writes off effected, voluntary disclosures settled, penalties imposed and publicised, prosecutions launched and all other relevant and important information relating to the administration of the direct taxes during the year.

8.27. The four Directorates suggested by us should be attached offices of the Central Board of Revenue and function under its general control as is the position in respect of the present Directorates. Each of the four Directors who will be a senior Commissioner, drawing a special pay of Rs. 250/- per month should have under him Deputy Directors and Assistant Directors, drawing as at present 'special pay', and the requisite staff. While performing their functions, the Directors should see that they do not undermine the authority of the Commissioners of Income-tax in the different units. They should ordinarily obtain the concurrence of the Central Board of Revenue while issuing instructions of a general nature

to the field officers. Having regard to the workload of each Directorate, we suggest that the strength of the gazetted officers should be as under:

Name of the Directorate	Deputy Directors	Assistant Directors
1. Directorate of Inspection	5	2
2. Directorate of Investigation & Intelligence	3 plus 6 Specialists	4
3. Directorate of Vigilance	3	1
4. Directorate of Training, Statistics, Research & publications	2	2 Asst. Directors 1 Statistician 2 Assistant Statisticians.

COMMISSIONER OF INCOME-TAX

8.28. The field administration of the Department is divided into eighteen distinct units—each in charge of a Commissioner. Sixteen of such units are formed on territorial basis and the remaining two, called Central charges, have been constituted without reference to any particular area for dealing with investigation cases specifically assigned to them by the Central Board of Revenue. The territorial Commissioner's charges have been formed keeping in view various factors such as State boundaries, number of assessments and assessing officers, revenue potential, etc. Our attention was drawn to the wide differences in the span of the various units as at present constituted. It was urged before us that to enable the Commissioners to exercise effective control and supervision over the administration, the number of assessing officers should not exceed 50 to 60 in a charge. In view of the fact that for administrative convenience the different Commissioners' charges should, as far as possible, be co-extensive with the State boundaries, and as the various parts of the country are not economically and industrially developed to the same extent, it is not practicable to reorganise the various units strictly on the basis of the number of officers working under each Commissioner and the revenue collected in each charge. We understand that the Commissioners' charges have been re-arranged by the Central Board of Revenue only recently and any large scale reorganisation at present will not only dislocate the administrative machinery but also increase the cost of collection.

8.29. On a careful examination of the personnel and other aspects of each Commissioner's charge, we find that in West Bengal, Bombay City and Bombay North, the number of subordinate officers is too large and the amount of work too heavy to be efficiently managed by the present number of Commissioners posted in these charges. In the two Commissioners' charges of West Bengal and Calcutta, which have a common cadre and establishment, the sanctioned strength of officers is 280 and the annual collections of revenue come to Rs. 65 crores (other direct taxes being included). It is difficult for the two Commissioners to look after such a large number of officers. Similarly, in the two Bombay City Commissioners' charges, the number of officers sanctioned is 239 and the annual revenue is of the order of Rs. 57 crores. In the charge of the Commissioner of Income-tax, Bombay North, with headquarters

at Ahmedabad, we find that there are 131 officers with a yearly revenue collection of Rs. 13 crores. Having regard to the number of officers allotted to these charges and the revenue importance, we recommend the creation of three additional posts of Commissioners, one for West Bengal & Calcutta, another for Bombay City and the third for Bombay North, the headquarters of the latter being preferably at Baroda. We also suggested that with a view to reducing the work of the Commissioner of Income-tax, Madras, who has a larger number of officers under him as compared to the adjoining charge of Kerala, two more Districts of Madras, adjacent to Coimbatore, should be transferred to the latter charge. The Board may consider the creation of more Commissioners in future with a view to having better manageable charges as and when found necessary.

8.30. We have suggested in the Chapter on Appeals and Revisions the creation of two posts of Appellate Commissioners for the purpose of having administrative control over the Appellate Assistant Commissioners. These Appellate Commissioners will be in the same grade as other Commissioners, but they will be deputed to the Ministry of Law for a certain tenure. They will also hear appeals in estate duty matters and in cases in which orders have been passed by the Inspecting Assistant Commissioners as assessing officers.

8.31. There are at present two grades of Commissioners viz. Grade I with a pay scale of Rs. 1800—100—2000/- and Grade II with a pay scale of Rs. 1600—100—1800. It has been represented before us that this classification into two grades is neither rational nor desirable. Commissioners of both the grades are administrative heads of their respective charges and perform similar duties and functions. It is also seen that though the different Commissioner's charges have been classified as Grade I or Grade II, for administrative convenience, there have been several instances of upgrading or downgrading some of the charges depending on the persons posted to them. We have carefully examined this question and we do not see any justification for the existing classification of the Commissioners into two grades. We feel that heads of the Department performing similar functions and duties should be in a common unified grade as is the position obtaining in most of the other Government departments. We, therefore, recommend that the existing Grade II should be abolished and all the Commissioners should be in one common grade and get the same scale of pay as given to other heads of departments like the Accountants General, Post-Masters General, Divisional Commissioners, etc., as well as to the members of the Income-tax Appellate Tribunal. The two posts of Commissioners at Bombay City and West Bengal should, however, continue to be given the 'special pay' of Rs. 250/- per month as is also the case with senior Commissioners appointed as Directors in the different Directorates referred to earlier.

8.32. It was pointed out to us that though powers have been delegated to the Commissioners for making appointments of certain categories of staff, determining their disposition and deployment and for incurring expenditure out of the funds placed at their disposal, certain undue restrictions have been placed on their exercise. We are of the opinion that such restrictions should be removed in respect of the heads of departments to whom powers are delegated and this will do away with the increase in number of references and delays in carrying

out the day-to-day administration. There should also be a further decentralisation and delegation of enlarged powers to the heads of departments in respect of incurring of expenditure on printing and purchase of stationery, legal charges, etc. as well as with regard to appointments, promotions and transfers.

3.33. It was brought to our notice that there was a growing tendency amongst some of the taxpayers to directly approach the Central Board of Revenue over the heads of the Commissioners for the redressing of their grievances. It was stated that such a practice tended to undermine the authority of the Commissioners and also demoralised the subordinate officers. We have been assured that instructions by the Board are restricted only to cases where they are considered necessary for eliminating hardship of assesseees and for ensuring uniform standards of administration. We are of the opinion that normally nothing should be done to fetter the discretion and authority vested in the subordinate officers. The higher authorities should entertain representations only when the lower authority has failed to do proper justice to the persons concerned. While issuing instructions on such representations, views of the subordinate officers concerned should invariably be obtained and duly considered. We wish to emphasise that the Commissioners should continue to be fully responsible for the day-to-day administrative matters in their respective charges. Greater reliance should be placed on the officers on the spot and there should be as little interference with their work and authority as possible.

DEPUTY COMMISSIONERS.

3.34. We have examined the question whether there should be an intermediate grade of Deputy Commissioner between the posts of Commissioner and Assistant Commissioner. Recently thirteen posts of Deputy Commissioners have been sanctioned in the scale of Rs. 1,300—60—1,600. In actual practice, however, none of these posts has been filled for certain administrative reasons. These posts of Deputy Commissioners are intended to replace the posts of Deputy Directors in the various Directorates who at present receive a Special Pay of Rs. 150 per month in addition to their salary as Assistant Commissioners. As the posts of Deputy Commissioners or Deputy Directors would generally go to the senior Assistant Commissioners, it is felt that a special pay of Rs. 150 per month in addition to the regular salary in the scale of Assistant Commissioners as obtaining now is better in many respects than the scale prescribed for the posts of Deputy Commissioners. Apart from this consideration, we think that it is not advisable from the administrative view point to bring in another intermediary between the Commissioners and the assessing officers. This may lead to diffusion of responsibility and lack of co-ordination. We consider that a Commissioner should be directly in charge of overall supervision and control of all the officers working under him. If a charge is too large to be administered efficiently by one Commissioner, the remedy would lie in splitting such a charge rather than putting in another officer, who would more or less be a headquarters Assistant Commissioner. In this view of the matter, we have made suggestions for creating three more posts of Commissioners. We do not, therefore, favour the creation of the posts of Deputy Commissioners.

ASSISTANT COMMISSIONERS

8.35. Persons in the cadre of Assistant Commissioners occupy either the posts of Appellate Assistant Commissioners or Inspecting Assistant Commissioners, the working strength as on 1st April, 1959, of these being eighty-three and sixty-seven respectively. These posts are interchangeable and carry the same scale of pay *viz.*, Rs. 1,000—50—1,400. In order that these senior officers, who in their turn would become heads of department as Commissioners of Income-tax, should have experience of both appellate and administrative work, they are posted in turn to each of these wings. Our views and suggestions with regard to Appellate Assistant Commissioners have been given in the Chapter on Appeals and Revisions. We shall, therefore, confine our comments here to the Inspecting Assistant Commissioners.

8.36. The Inspecting Assistant Commissioner is the administrative link between the Commissioner and the assessing officer.
 Duties His administrative duties include control over the tax offices, guidance to the assessing officers and inspection of their work and performance of statutory functions enjoined on him under the various direct taxes Acts. He is directly responsible to the Commissioner for the efficient working of the Circles under his control.

8.37. Inspecting Assistant Commissioners have been strongly criticised in respect of their functions and mode of work and several suggestions have been made from different quarters in this regard. The major complaint is that the Inspecting Assistant Commissioner instructs the assessing officer at the back of the assessee and directs him to make assessments in a manner which often materially prejudices the assessee's case. Such a practice, not only cripples the initiative and judgment of the assessing officer, but also goes against the principle of natural justice since the assessee has no opportunity to put forth his view point in the matter of inter-departmental proceedings. We note that this practice also came in for adverse comments at the hands of the Income-tax Investigation Commission which remarked that inasmuch as the draft assessment orders in some important cases had to be previously approved by the Inspecting Assistant Commissioner and the instructions issued by him in all cases had to be necessarily carried out by the assessing officers, it was idle to pretend that the assessing officer in such cases was the Income-tax Officer and not the Inspecting Assistant Commissioner.

8.38. We do not think that this strong criticism of the working of the institution of Inspecting Assistant Commissioner is justified. From the statistical data furnished to us by the Central Board of Revenue, we find that hardly 0.4 per cent. of the total assessments have been so finalised by the assessing officers after obtaining instructions from the Inspecting Assistant Commissioners. This figure, of course, does not include the assessments made in the Special and Central Circles and the Group charges which function under the close guidance and supervision of the Group Assistant Commissioners. In our view, the need for and importance of guidance by senior officers who have wider experience and maturer judgment than most of the assessing officers cannot be over-emphasised. In fact, Section 5(7B) of the Income-tax Act which provides for the issue of necessary instructions by the higher authorities to the Income-tax Officers, gives statutory recognition to the need for such a guidance. The Taxation Enquiry Commission had supported the institution of Inspecting Assistant Commissioner and remarked that they saw nothing

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inherently wrong in the instructions being given by higher authorities to the assessing officers in important and complicated cases which involved investigation and determination of various questions of facts and law. It further observed that interference by superior officers might not always be to the disadvantage of the assessee.

8.39. We are of the opinion that pre-assessment guidance and control by the Inspecting Assistant Commissioner is necessary for improving the quality of assessments and checking tax evasion. The administration of direct taxes laws involves various complicated and technical points of facts and law and the assessing officers, who are not all well trained and experienced, need the guidance and advice of senior officers like the Inspecting Assistant Commissioner. It is seen that the quality of assessment work in the Central and Special Circles and the Group charges, where the Inspecting Assistant Commissioner exercise more personal control is comparatively better and in some cases unnecessary appeals are avoided and better collections made as a result of this pre-assessment guidance. As we are mentioning later on in this Chapter the scheme of Group Assistant Commissioners' has been generally welcomed both by the Department and the tax paying public. This clearly shows the value and importance of pre-assessment control and guidance by the Inspecting Assistant Commissioners.

8.40. At the same time, it is essential, in our view, that the assessee should not feel that their cases are materially prejudiced by the instructions given by the Inspecting Assistant Commissioners at their back, without considering their view of the matter. We, therefore, suggest that the Inspecting Assistant Commissioners should give to the assessee, whenever asked for, an opportunity of being heard before issuing instructions to the assessing officers. It is also desirable that the instructions issued by the Inspecting Assistant Commissioners do not result in demoralising the assessing officers and crippling their initiative and sense of responsibility. The instructions should be given in an objective manner and after full discussion and proper appreciation of the facts involved. We also suggest that on important questions, instructions to the assessing officers in the non-group charges should be issued by the Inspecting Assistant Commissioners in writing.

8.41. We had posed the question whether the Inspecting Assistant Commissioners should be made the assessing officers in more important cases. This suggestion was made with a view to considering whether the knowledge and experience of the senior officers who have been promoted as Assistant Commissioners should not be utilised by the Department in making assessments in difficult cases. It was urged before us that due to the rapid expansion of the Department in recent years some of the assessing officers lacked experience and maturity of judgment and the quality of assessment work could be improved by the step proposed. *Though there would be some advantages in adopting this proposal in a few selected cases, we are not inclined to accept it as general rule.* In our opinion, the best way of utilising the experience of senior officers of the rank of Assistant Commissioners is to entrust them with the task of properly guiding, advising and instructing the assessing officers wherever it is considered necessary. *We, however, recommend that a few of the Assistant Commissioners should also be entrusted with the actual assessment work in important cases involving large revenues where detailed investigation is necessary and complicated questions of*

Assessment work by
Inspecting Assistant
Commissioners.

fact and law are required to be decided. The number of such assessing Assistant Commissioners should be kept to the minimum and only ten such posts be created for the present in important charges like Bombay, Calcutta and other centres for handling big cases involving detailed investigation. These posts should carry a special pay of Rs. 150 per month as also those of Appellate Assistant Commissioners in Special Ranges which we have referred to in the Chapter on Appeals and Revisions. The appeals against the assessments made by the assessing Assistant Commissioners should lie directly to the Appellate Commissioners, the creation of whose posts has been suggested earlier in this Chapter.

8.42. With a view to improving the quality of assessment work and keeping better control over collection of taxes, the Department has of late constituted group Assistant Commissioners' charges in some important centres.

Group Charges
The group Assistant Commissioner acts as a leader and has concurrent responsibility for the completion of the investigations and for securing fair assessments and prompt collection of taxes in respect of all cases in his charge. He has to see that the cases in his group charge are properly distributed, the assessment work is well-planned and investigations correctly carried out. Besides taking steps for speedy disposal of cases and clearance of arrears, he has to watch that taxes are collected promptly without, at the same time, causing undue harassment to the assesses. Though he is not expected to go through all the assessment orders, it is his responsibility to chalk out the lines of investigation in important and complicated cases and guide the assessing officers in their work. He has no separate office of his own but a combined office with the assessing officers in the group so as to develop a sense of group working and joint responsibility. Difficulties are solved by personal discussions and correspondence is reduced to the minimum. In view of the mode and extent of his work, he is given a smaller number of assessing officers, about ten or so.

8.43. We found that the reaction of both the official and non-official witnesses to this system of group charges was on the whole quite favourable. It was stated that besides improving the quality and quantum of assessment work by greater pre-assessment guidance and control, this system reduced the number of appeals and arrears and collection. We, therefore, suggest that this system should be extended and group charges should be created in all the important cities. Small income group cases for which we have suggested a different treatment should be eliminated from these group charges. We understand that at present there are about fifteen such group charges. Having regard to the number of cases in the large income group and examination of the work-load involved, we recommend that twenty-five more group charges should be created in the units of the various Commissioners. Though the expansion of this system will mean an increase in the number of Assistant Commissioners, we are sure that the extra expenditure involved will be more than compensated by the results secured.

8.44. One of the important functions of the Inspecting Assistant Commissioner in the non-group charges is to inspect the work of assessing officers under him. This mainly consists of post-assessment inspections of some of the cases completed by the assessing officer concerned. From the statistics supplied to us by the Central Board of Revenue, we find that the number of inspections carried out by the Inspecting Assistant Commissioners has considerably fallen in

the last two or three years as compared with the number of such inspections done earlier. This decline is stated to be due to two factors *viz.*, the recent creation of group Assistant Commissioners' charges where no inspection was enjoined to be done and to the Department's placing more importance at present on pre-assessment control than on post-assessment inspections. Through inspection the senior officer is able to know as to how the assessing officers under him carry out their administrative duties as well as gauge the quality of their assessment and collection work. We view with concern the neglect of this important work in the Department. The main reason for the neglect of inspection work is said to be the very large number of assessing officers working under an Inspecting Assistant Commissioner. *In our opinion, the number of assessing officers under an Inspecting Assistant Commissioner in a non-group charge should be reduced to about twenty so as to ensure that both administrative and regular inspection of assessment and collection work of each assessing officer is carried out every year.*

8.45. The group Assistant Commissioner is at present not required to do any post-assessment inspection of the work done by the assessing officers under him. It is, however, obvious that the pre-assessment control exercised by him cannot cover the entire field of work in the various Income-tax Circles in his charge. *We, therefore, consider that the group Assistant Commissioner should also inspect the work of the assessing officers under him particularly in respect of assessments which have been finalised without his direct guidance.* Besides, administrative inspection of these offices is also required to be done. We suggest that the Inspecting Assistant Commissioners, including those in group charges, should chalk out planned programmes of inspections which should be got approved by the respective Commissioners and a copy sent to the Director of Inspection.

8.46. Our attention was drawn to the complaint that inspections by the Inspecting Assistant Commissioners were not always objective and were more in the nature of fault-finding and destructive criticism. We are informed that the Central Board of Revenue has, from time to time, been issuing necessary instructions to impress upon the Inspecting Assistant Commissioners, the need for carrying out inspections in a helpful and constructive manner. Destructive criticism unnerves the officer and impairs his initiative and independent judgment. It is essential that besides being objective, the inspection reports should also clearly bring out the good work done by the assessing officers so that due encouragement is given and self-confidence imbibed in them in the discharge of their duties. The need for a correct, impartial and objective appraisal of the work of the assessing officers cannot be over-emphasised as the inspection reports are taken into consideration, and rightly so, for determining the merit and efficiency of these officers.

ASSESSING OFFICERS

8.47. The manner in which the assessing officers should carry out their duties in regard to assessment, collection and other matters has been discussed in detail in the preceding chapters. In order to have a more efficient working of the Department and improved public relations, it is essential that the various do's and don'ts suggested by us in the respective places in this report should be strictly followed by the assessing officers. We have advocated in the Chapter on Evasion and Avoidance that Special Circles which are now functioning under the guidance of the Director of Inspection (Investigation) in relation to assessment work should be transferred

to the control of the territorial Commissioners also for this purpose. However, it is imperative that the important and difficult cases, and those involving tax evasion, should be dealt with by experienced and competent assessing officers. *Hence we suggest that the special pay of Rs. 75/- attached at present to the Special Circles should continue and be given to the assessing officers who man these Circles in the territorial charges.*

8.48. Prior to 1944 there was only one grade of Income-tax Officers. Gradation Consequent on the formation of the Central Class I and Class II Services, the assessing officers were classi-

fied under three cadres viz., Class I Grade I, Class I Grade II and Class II. It has been represented to us that the statutory functions and duties of the various grades of assessing officers under the different direct taxes Acts are similar. There is no specific classification or demarcation of the work to be performed by the different grades of officers. In some cases, a Class II Officer is made to man a post as important as the one in which a Class I Grade Officer should normally be posted. It has, therefore, been urged that this division into two classes is inequitable and unjustified and should be done away with.

8.49. We find that though generally speaking the duties and functions of the assessing officers are more or less the same, having regard to the different types of charges in the respective territorial units, there is certainly a difference in the nature of work and the responsibility to be shouldered by various officers. The assessment work in important cities is more onerous and difficult as compared to that in the mofussil offices. The categorisation of the cases in different standard units for the purpose of evaluation of work clearly shows that a classification of the nature of assessment work is possible. Even at present Class II assessing officers are generally entrusted with cases of comparatively low revenue potential and are posted to easier charges like Salary, Refund and Mofussil Circles. Cases in Special, Central and Company Circles as well as those of important businesses in big cities and assessments involving multiple tax liability would normally have to be dealt with by senior officers with sufficient experience and merit. The scheme for dealing with small income group cases discussed by us in the Chapter on Assessments also envisages a clear classification of work involving comparatively less labour and responsibility.

8.50. An important consideration in favour of the retention of Class II cadre is that it provides an avenue for promotion of the non-gazetted staff to the higher executive cadres. The previous Committees and Commissions, which considered this question, expressed themselves in favour of the retention of the Class II service. The quality and efficiency associated with the Class I service which is largely manned by persons who have qualified in competitive examinations of the Union Public Service Commission have to be maintained at the highest degree and this cannot be done if Class II cadre is merged with it. *Considering the pros and cons of the question we recommend that the Class II cadre should continue. There is, however, no justification in maintaining the two grades in Class I service.* In our view, the broad categorisation of posts into two classes viz., Class I and Class II, having regard to the nature of work, is sufficient and there is no justification for further bifurcation of Class I into two grades. *We would, therefore, recommend the abolition of the present two grades and introduction of an integrated pay scale for the entire Class I service combining Grade I scale as well as that of Grade II.*

8.51. It has been pointed out to us that the prospects of promotion of officers in Class II to Class I are very meagre with the result that these officers suffer from a sense of frustration. This problem has also assumed particular importance in view of the fact that whilst a majority of direct recruits have been taken in Class I Grade II, there were *ad hoc* direct recruits to Class II service in 1947 and in 1954. There are at present over 800 Class II assessing officers and nearly 50 per cent of them have put in the minimum service of five years which qualifies them for promotion to Class I. This figure includes over 200 direct recruits to Class II referred to above. The number of vacancies available in Class I to be filled up every year by promotion is very small. In this context we have examined the nature of work and the responsibilities to be shouldered by the assessing officers in the different charges. In our opinion, cases involving multiple tax liability, estate duty cases and category I cases, which are mainly concentrated in Central and Special Circles and Group Charges should be dealt with by Class I officers. Officers doing special work in Headquarters Charges of Commissioners, Public Relations Offices, Foreign Sections and Special Investigation Branches should also be from the Class I cadre. Officers who are deputed to act as Departmental Representatives before the Income-tax Appellate Tribunal are doing important and responsible work and these posts should also be in Class I cadre. We have suggested in the Chapter on Collection and Recovery that officers of the Department should be entrusted with recovery work instead of depending on the State officers. This work is also important and should be entrusted to Class I Officers. Some of the new direct recruits in Class I should in the beginning of their service be posted to Circles dealing with small income group cases as a part of their training. Charges like Salary Circles, Refund Sections, Special Survey Offices as well as those having small income group cases and assessments other than category I could be dealt with by officers in Class II cadre. Leave reserves to the extent of ten per cent of the total strength of officers should all be in Class II cadre. On a detailed analysis we find that there should be about 727 charges which should be dealt with by Class I officers as against the present sanctioned strength in this cadre of 623 officers. Hence, we suggest that the number of Class I posts should be increased by about 100. These increased posts along with about half of the existing vacancies should all be filled up by promotion of the most efficient and deserving Class II Officers by selection on the basis of merit.

8.52. At present when a Class II officer is promoted to Class I he gets a weightage of three years in seniority as compared to a direct recruit to Class I. Fears were expressed before us that this weightage to promotees over the direct recruits adversely affects the interests of the latter. The import of this system appears to be to give some priority to promotees in view of their past service in the Department. We understand that the operation of this rule has been rescinded by the Central Board of Revenue with effect from 1957. In our view, promotion to Class I is in itself a sufficient benefit given to Class II officers. We, therefore, do not favour granting of any further advantage in the nature of weightage.

8.53. There were 1353 assessing officers on 1st April 1959 as against the sanctioned strength of 1459. The consensus of opinion gathered by us was that this number was inadequate to cope up with the volume of work entrusted to them. With the introduction of the new direct taxes and the lowering of the minimum taxable limit for income-tax, the work of the Department has increased considerably. With the increasing economic development of the country

through the five year plans, it is estimated that the total number of income-tax assesseees would increase from 9 lakhs and odd to about 12 lakhs in the course of another five years. We have suggested in the Chapter on Assessments a scheme for quicker disposal of cases in small income group. The introduction of this scheme would, we expect, release about 100 assessing officers to attend to the other more important work in the middle and higher income group cases. However, having regard to the increased volume of assessment and other work and keeping in view our proposals for more public relations and special survey officers as well as for entrusting the recovery work to the officers of the Department, a small increase in officers would still be necessary. On an analysis of the workload and the categorisation of different charges discussed earlier, we find that as against the present sanctioned strength of 1459 a little over 1500 officers would be necessary to carry out efficiently the assessment and other work of the direct taxes Department. We, therefore, recommend that the present strength of assessing officers should be augmented by about 50.

8.54. The first attempt for prescribing standards for measuring workload of the assessing officers was made under the Re-organisation Scheme of 1946, under which the following types of categories of cases with respective standard units were evolved:

Description	Category	Standard Unit of each case
(i) Cases with business income over Rs. 25,000	I	1
(ii) Cases with business incomes between Rs. 10,000 and 25,000	II	1/5th
(iii) Cases with business incomes between Rs. 5,000 and 10,000	III	1/10th
(iv) Cases other than those in (i) to (iii) above and (v) below	IV	1/15th
(v) All salary, refund and no assessment cases	V	1/20th.

Similar categorisation has been made for assessments under the other direct taxes Acts. The above standards have been utilised for fixing the workload which the officers in the two Classes are expected to do. Whilst an officer in Class I Grade I and Grade II is expected to complete in a year 250 and 150 standard units respectively, the quota fixed for assessing officers in Class II is only 70 such units for a year. These standards, of course, vary in the different Commissioner's charges having regard to the local conditions and other factors.

8.55. It has been urged that categorisation of cases and fixation of standards for the output of the different grades of assessing officers are somewhat defective and unrealistic and that they tend to lay undue emphasis on quantitative performance to the neglect of qualitative aspect of the assessment work. The Income-tax Investigation Commission had observed in this regard that rigidity of such standards was not likely to do justice to the assessing officers who had to handle different types of cases. We have examined this question and we feel that for purposes of evaluation of work and control of output some categorisation of cases and fixation of disposal in standard units are necessary. Though it is impossible to fix infallible standards of work and category of cases in terms of the man hour content involved in different assessments which have varied

problems and ramifications, we are of the view that if there is to be proper planning and administrative control over the assessing officers, a system of planned targets cannot be avoided. It should, however, be seen that a rigid compliance of the planned programmes does not cause unnecessary hardship either to the assessing officers or to the assessees. With this end in view, we suggest that Inspecting Assistant Commissioners should analyse the volume and type of work with each assessing officer in their charge at the commencement of the financial year and fix up a planned programme for the whole year having regard to the nature of work and the type of cases. Wherever required, a redistribution of work amongst the assessing officers should be done and the Inspecting Assistant Commissioners should see that the work distributed amongst them is fair and reasonable.

8.56. Our attention was invited to a complaint frequently made by the assessing officers that they were not able to devote adequate time and attention to their assessment and collection work in view of the various administrative matters which they had to attend to. For the efficient functioning of his office, the assessing officer has necessarily to look after its administrative affairs in addition to discharging his statutory duties. *It is, however, desirable to relieve him of the routine administrative work which can be assigned to a subordinate non-gazetted officer.* In our opinion, the responsibility for the preparation and submission of the various routine statistical returns and reports to the higher authorities should rest on the office supervisor who may send them under his own signature. The supervisor should also be entrusted with various routine administrative matters like issue of return forms under Section 22 of the Income-tax Act and corresponding Sections of the other Acts as well as watching the filing of returns and collection of taxes. The assessing officer should, however, remain personally responsible for the submission of important returns, revenue and expenditure budgets monthly progress reports, etc.

INSPECTORS

8.57. Inspectors who belong to the non-gazetted staff form the lowest rung in the ladder of the executive authorities in the Department. There are at present two grades of Inspectors viz., Selection and Ordinary, there being 116 and 930 persons working on 1-4-1959 in these two grades respectively. The main duties of the Inspectors are to conduct external surveys for bringing new assessees to book and making outdoor enquiries on points referred to them by assessing officers. They assist in the service of notices wherever necessary and in executing distress warrants and in other recovery work. They also assist the assessing officers in the scrutiny of books of accounts, whenever required to do so.

8.58. We have discussed in the Chapter on Evasion and Avoidance the necessity of having proper surveys made periodically with a view to bringing new assessees on the Department's register. Besides the fact that survey work is considerably neglected and not done as extensively as it should be, no strict supervision or control is being exercised over this part of the Inspector's work. It has been represented to us that not only many assessees who have taxable incomes escape from the net of the Department, but the estimates of income made by the Inspectors during survey and spot enquiries are often unreasonable and unreal. *We, therefore, wish to emphasise that assessing officers and Inspecting Assistant Commissioners should exercise stricter control and supervision over the work of the Inspectors, so that these defects are remedied.*

8.59. Though the Income-tax Act [Vide Section 5(1)] specially refers to an Inspector as an executive authority the other direct taxes Acts do not give him such an authority. It was brought to our notice that Inspectors were greatly handicapped in survey and enquiry work by the lack of adequate statutory powers and also facilities of conveyance, etc. *In our view, it is necessary that Inspectors should be given statutory status under the other direct taxes Acts also as is the position obtaining in the Income-tax Act.* However, with a view to preventing any abuse of these powers, an Inspector should carry a written authority under the signature and seal of the assessing officer specifying the points on which he has to make survey and other enquiries. As for conveyance facilities, we feel that a suitable allowance should be given to all the Inspectors employed on survey and other outdoor work. The conveyance allowance need not be uniform for all places and may be fixed having due regard to the amount of travelling that is required to be done and the mode of conveyance used.

8.60. As discussed in the Chapter on Assessments, the responsibility for the examination of accounts necessary for purposes of assessments should primarily rest, as at present, with the assessing officer himself. However, with a view to relieving him of the burden of doing routine check of accounts, it is necessary that the services of Inspectors are utilised for this purpose. The Inspectors' cadre is a feeder to the gazetted posts of assessing officers. It is, therefore, desirable that the promotees should have good previous experience in the examination of accounts. In a taxing department like that of Income-tax, proper examination of accounts is necessary for checking tax evasion and framing correct assessments. We feel that Inspectors in general and those in Selection Grade in particular should, in addition to their main duties of survey and enquiries, be utilised for routine examination of accounts or detailed scrutiny on specified points as indicated by the assessing officers. While evaluating the work of the Inspectors, the quality of survey work done, the manner in which the outdoor enquiries are made and the examination of accounts carried out should each be separately and specifically commented upon. These factors should also be looked into when Inspectors are considered for promotion.

8.61. It was represented to us that no distinction had been made between the duties and functions of the two grades of Inspectors and, therefore, the classification into two grades was unjustified. We, however, find that almost all those who advocated the merger of the two grades have also suggested the revival of a separate cadre of Examiners of Accounts. We understand that though the duties of the two grades of Inspectors are not clearly distinguished, a distinction is certainly observed in practice. The personnel in the Selection Grade is posted to important Circles and mainly utilised in the work of examination of accounts in complicated cases. *Considering all the aspects of the question, we are not inclined to favour the merger of the two grades of Inspectors.*

8.62. It was urged before us that the present number of Inspectors was inadequate with the result that external survey and outdoor enquiries were not being adequately attended to. In the earlier paragraphs we have adversely commented on the lack of extensive survey and the improper way in which enquiries are made at present. The manifold duties which an Inspector has to do are important inasmuch as they cover the considerable amount of spade work which is required to be done in many cases before assessments are finalised and recovery of taxes effected. On careful consideration we are of the opinion that every

assessing officer should be provided with at least one Inspector. However, having regard to the nature of work in circles dealing with small income, salary and refund cases, it would be sufficient if one Inspector is given to two assessing officers in these Circles. In Special Survey Circles and Special Investigation Branches, there should be a team of not less than three Inspectors under each Officer and the Estate Duty Officer should continue to have two Inspectors as at present. *Taking all the requirements into consideration, we are convinced that some enlargement in the cadre of Inspectors is very necessary and we suggest that the present sanctioned strength of 1114 be increased by 250 posts of Inspectors.*

MINISTERIAL AND OTHER STAFF

8.63. The Supervisor and the Head Clerks are the principal ministerial heads of the various offices in the Income-tax Department. They are responsible for the supervision of the work of other ministerial staff and have to see that records and registers are properly kept, taxes and refunds are correctly computed and regularity in the disposal of work is maintained. There are at present three classes of supervisory officers, viz. Supervisor (Grade I), Supervisor (Grade II) and Head Clerk whose working strength was 73, 172 and 397 respectively as on 1st April, 1959.

8.64. It was represented to us that the supervisory posts were insufficient in number and that the span of work and the extent of control which these ministerial heads had to exercise were too wide to provide an effective check and supervision. It was stressed from many quarters that one of the main causes for delay of work at all levels and the defects in the maintenance of records and registers was the lack of proper supervision and control over the ministerial staff. In the offices of the Appellate Assistant Commissioners and single Income-tax Officer's Circles no whole-time supervisory officer is at present appointed as there are only a small number of clerks working there. In such offices an Upper Division Clerk is required to perform in addition to his own the supervisor duties for which he is paid a special pay of Rs. 20 per month. *On a careful examination of the workload and the necessity for having proper supervision and control over the ministerial staff, we feel that each tax office, however, small, should have a whole-time Head Clerk. However, having regard to the nature of the work, the offices of the Appellate Assistant Commissioners may continue to be supervised by an Upper Division Clerk. The offices of the Inspecting Assistant Commissioners which require handling of special type of work should be manned by Supervisors. In our opinion, there should be on an average, one supervisory officer for every ten clerks and out of the total supervisory posts, at least one-third should be in the cadre of Supervisors. The exact number of the supervisory posts required may be worked out by the Department on this basis.*

8.65. It has been represented that the duties and functions of the Supervisors and Head Clerks are practically the same and, therefore, there should be one common cadre for such ministerial heads. We, however, find that there is difference in the nature of work and responsibility which Supervisors and Head Clerks are called upon to shoulder. Head Clerks perform supervisory duties only in Circles which are not considered important enough to have a Supervisor. In offices where Supervisors are posted, Head Clerks are only subordinate functionaries. *Having regard to the nature of work and other factors, we*

are of the opinion that the two cadres of supervisory officers should continue. However, we do not see any justification for the present classification of the Supervisors into two grades. The duties performed by the personnel in the two grades are nearly the same and the starting pay and the increments are identical, the only difference being in the maximum of the pay scale for the Grade I Supervisors. In our opinion, Grade II should be abolished and there should be only one grade of Supervisors and the present pay scales should be integrated for this purpose. Senior supervisory posts in higher administrative offices like those of the Commissioners and Directorates should be manned by officers of a status higher than that of the usual Supervisors. We understand that the offices of the Directorates are, at present under the charge of Superintendents whose scale of pay is Rs. 400-500. In our opinion the offices of the Commissioners should also be placed in charge of officers drawing similar pay and having the higher status. We further suggest that these higher supervisory officers in the offices of the Commissioners and Directors should be of gazetted rank and may be designated as Administrative Officers. Such officers should be appointed by promotion from amongst the supervisors on the basis of selection by merit alone.

8.66. It was stressed both by official and non-official witnesses that the existing strength of the ministerial staff in the Other Ministerial staff. Department was inadequate and required to be strengthened. There were 4221 Upper Division Clerks, 2842 Lower Division Clerks, 189 Stenographers and 1382 Stenotypists working as on 1st April, 1959 in the various offices spread over the different units. It was pointed out that not only had the volume of work to be attended to by the ministerial staff been steadily increasing but it had also become more complicated and difficult. The increase in the number of assesseees and the introduction of new measures of taxation had considerably added to the workload which the ministerial staff were required to do. The frequent changes in the tax laws both of substantive and procedural character had made the calculations of tax and other work in general more difficult.

8.67. It is essential for the efficient disposal of work that the Department is adequately staffed. We understand that several measures have been taken by the Central Board of Revenue with a view to having a better and more effective utilisation of the existing staff. Earlier in this Report we have advocated several measures for checking tax evasion, improving assessment and collection procedures and securing better public relations. We have also stressed that the assessing officers require to be freed from routine work so that they can concentrate on the more important work of assessment and collection. We are aware that Government is viewing with concern the expansion of the non-gazetted staff in the Secretariat and other offices and taking necessary steps to economise in this regard. Though there should be no wasteful employment of personnel and the maximum possible economy should be effected in expenditure, we are convinced that the direct taxes offices should be equipped with adequate staff as otherwise the collections of revenue would suffer. We leave it to the Government to sanction, after due examination, such additional staff as may be necessary from time to time for the efficient functioning of the Department.

8.68. We have suggested in the Chapter on Assessments that the notice under Section 22(2) of the Income-tax Act should Non-ministerial Staff. generally go through post. This will considerably reduce the strength of Notice Servers, who numbered 1098 as on 1st April, 1959 as well as eliminate delays and difficulties in the

service of notices. It was pointed out to us that though the Notice Servers had been classified as Class III Officials, Duftries with similar pay scale were put in Class IV. This position should be reviewed and the anomaly removed.

8.69. Complaints were made to us by the Class IV staff that they were at times asked to attend to the private and domestic work of their superiors. This is presumably due to the fact that appointments in this cadre are made having regard to the dignity of the officers and without properly taking into consideration the quantum of official work. This state of affairs is objectionable. We understand that the Central Board of Revenue has already issued strict instructions prohibiting the employment of these persons for non-official purposes. We desire that strict observance of these instructions is enforced. *We also suggest that the nature of the duties to be performed by the Class IV staff should be clearly laid down so that no doubt is left with regard to their work and responsibility.*

8.70. There were 4198 Class IV employees as on 1st April, 1959 in the different direct taxes offices. This number includes peons, sweepers, watchmen and persons engaged in other unskilled work. *In our opinion, this strength, which has a ratio of one Class IV servant to a little over three of the staff in the other cadres, is too large and not commensurate with the work which these persons are required to do. In this connection, it is pertinent to point out that in the United Kingdom and several other countries, the number of posts corresponding to Class IV staff is extremely small. We feel that the present system of determining the strength of Class IV posts on the basis of the number of assessing and other gazetted officers and Inspectors should be done away with. The number of persons in this cadre should be fixed in relation to the actual quantum of official work required to be done by them. We suggest that the number of Class IV posts should be reduced to the absolute minimum and necessary economy effected.*

RECRUITMENT, TRAINING AND PROMOTION

8.71. Appointments to the various posts in the Department are made either by direct recruitment or by promotion or by both. Some witnesses represented before us that the system of having fixed percentages for direct recruitment and promotion to a cadre was inequitable and irrational because it may, sometime, result in recruitment or promotion of persons with comparatively poor calibre at the cost of those with better qualifications and merit. *In our view both direct recruitment and promotion to a cadre in specific proportion is, however, necessary to secure a correct and balanced blending of fresh talent and mature experience. At the same time, in observing the ratios laid down, due regard should be given for promoting only well qualified and really deserving persons. The quota of posts fixed for promotees should, therefore, be filled up only if there is a sufficient number of fit and qualified persons to man them. We wish to emphasise that merit and efficiency should be the sole criteria for filling of selection posts in any cadre and quality should not be sacrificed merely for reaching the quotas fixed.*

8.72. Several suggestions were made to us for effecting certain changes in the proportion of direct recruitment and promotion in the various cadres obtaining in the Department. It was even urged from some quarters that there should be no direct recruitment at all and all the posts should be filled by promotion from the lower ranks. It was stated that qualified and deserving persons in the lower ranks were not able to get

opportunity for quick promotion to higher grades on account of paucity of vacancies and the restricted quota of posts allotted for this purpose. It was added that this resulted in a sense of frustration and adversely affected the efficiency of the service. Whilst the prospect of persons recruited initially in the lower ranks to advance in service career is required to be safeguarded and adequate incentives provided to them, it is very essential that fresh and young blood is taken from time to time in the relevant cadres and persons with better qualifications are recruited directly. We wish to emphasise that a person recruited at any level should not consider it a matter of right that he should necessarily be promoted to a higher grade. However, if he proves his merit and passes the prescribed examinations, he should be eligible for promotion. We understand that the Department has already increased as a temporary measure, the quota of promotions to the cadres of Upper Division Clerks and Inspectors from Lower Division Clerks and Upper Division Clerks respectively to 50 per cent. It has also altogether stopped direct recruitment to the grade of Class II Income-tax Officers. We have already emphasised the necessity of having direct recruitment at the different levels. The stoppage of direct recruitment to the grade of Class II Income-tax Officers makes it more imperative that there should be a fair proportion of highly qualified persons to be recruited directly in the post of Inspectors, who, in their turn, would be promoted as assessing officers. In the Government Secretariat also there is direct recruitment in the grade of Assistants which are comparable posts carrying similar scales of pay. *We agree that the normal quota for promotion in the cadres of Inspectors and Upper Division Clerks should remain at 50 per cent as obtaining at present and no direct recruitment need be made to the posts of Class II Income-tax Officers. No change in the mode of filling of posts in other cadres is necessary at present.*

8.73. Another suggestion made to us was that a certain percentage of vacancies in the direct recruitment quota should be reserved for persons already employed in the Department in the lower ranks and special examination be held for them on the lines of the limited competition as obtaining in the British Civil Service. We, however, understand that Departmental people are at present freely allowed to compete along with the other candidates for appointment in the direct quota provided they satisfy the prescribed conditions regarding educational qualifications and period of service in the lower ranks and are also given the benefit of relaxation in age limit for this purpose. Hence no further concession appears to be necessary in this regard.

8.74. Direct recruitment to the cadre of Income-tax Officers, Class I Grade II is made on the basis of a combined competitive examination held by the Union Public Service Commission for recruitment to the various All-India and Central Class I Services. The consensus of opinion amongst the witnesses who appeared before us was that no change was necessary in the present system and we agree with this view. The Income-tax Department has to administer some of the most intricate and complex laws and must, therefore, necessarily possess the highest talent available. *We suggest that while making allotment to the various Class I Services a due proportion of the higher ranking candidates should be posted to the direct taxes Department.*

8.75. Recruitment to the non-gazetted ranks of Inspectors and Upper and Lower Division Clerks is made departmentally in the different Commissioners' charges. However, since 1958, Inspectors are being

recruited on the basis of an open competitive examination with a view to having a wider field and uniform standard in the selection of personnel in this cadre. The members of the ministerial staff continue to be recruited by selection after a preliminary test and interview from amongst the persons sponsored by the Employment Exchanges in different centres. In order to equip the Department with the best available talent, the ministerial staff should also, in our opinion, be recruited on the basis of open competitive examinations conducted in the different territorial units of Commissioners. We understand that several other departments like the Audit & Accounts, Defence, Railways, Posts & Telegraphs, etc., are not obliged to restrict the selection of their staff to the limited field of the persons sponsored by the Employment Exchanges. We see no reason why the Income-tax Department should not have the same freedom of choice. We suggest that with a view to eliminating any bias in recruitment of candidates and removing any chances of nepotism and favouritism a committee of at least three persons should be in charge of final selection. We do not propose to suggest any major changes in the educational qualifications prescribed for recruitment in these cadres. We, however, consider that it will add to the departmental efficiency if preference is given to persons possessing commercial and accountancy qualifications.

8.76. Comprehensive training programmes covering all grades of the staff are undoubtedly necessary for an efficient tax administration. The consensus of opinion amongst our witnesses was that the training facilities provided by the Department were inadequate and required considerable improvement. The training given by the Department to the Income-tax Officers at Nagpur was examined by us at first-hand on a visit to the Training College. We also visited the Administrative Staff College at Hyderabad. For a comparative study, some of us examined the training arrangements provided for the Indian Administrative Service and in respect of the Audit and Accounts Service by personally visiting the respective training centres. These studies and also the examination of the training arrangements obtaining in other countries, notably the United Kingdom and the United States of America, have convinced us that adequate attention has not been paid to this important aspect in the tax administration in India.

8.77. The Training College at Nagpur is for training directly recruited Income-tax Officers in the cadre of Class I Grade II. This institution is run under the control and guidance of the Commissioner of Income-tax, Madhya Pradesh, Nagpur & Bhandara, who is, for this purpose, designated as Director of Training. He is assisted by an Assistant Commissioner and an Income-tax Officer who work full time as well as by a number of part-time lecturers for teaching special subjects like Book-Keeping, General Law, Indian Economics, regional languages etc. The courses for training follow, broadly, the syllabus prescribed for the departmental examination of the Income-tax Officers.

8.78. The present practice of entrusting the work of Principal to a local Commissioner as an additional duty, does not fully serve the purpose as he is not in a position to give full attention to the training programmes and day-to-day studies of the trainees. In our opinion, it is necessary to have a whole-time Principal in complete charge of the Training College. He should be selected preferably from amongst the senior and well-experienced Assistant Commissioners and should be given a special pay of Rs. 200/- per month. The Principal should be assisted by a complement of

full-time instructors in the various subjects. We are told that Nagpur was selected as the training centre because of administrative reasons and in the expectation that sufficient accommodation would be available to house the College and the Probationers. On a personal visit to the Training College, we however, found that the accommodation and other facilities for teaching, housing etc. were inadequate. The College has, necessarily, to be residential in character for imparting day-to-day training and providing opportunities for the growth of sound service traditions through corporate living. *We suggest that the Training College should be shifted, as early as possible, from Nagpur and located at some other place like Hyderabad, Bangalore or Poona, if adequate accommodation can be arranged at any of these places.* The Training College, besides providing adequate housing and teaching accommodation, should be equipped with good library and gymnasium. Proper facilities for indoor and outdoor games and other recreations should also be made available.

8.79. The courses for training need not necessarily follow the syllabus of the departmental examinations. According to a scheme recently introduced by the Government, the Probationers have initially to undergo a four months' foundational training course along with the personnel selected for various other Services. This is a step in the right direction as initial grounding in public administration is essential for new recruits. This course will also develop a broader outlook and cultivate *esprit de corps* amongst officers allotted to the different Services. We find that practical training that is being imparted at the Nagpur College in the various aspects of the work in the Department, particularly in regard to scrutiny of accounts, is not adequate. In order to be efficient assessing officers, they should be given a sound training not only theoretical, but also of an extensive practical nature. *We suggest that after completing the four months' foundational training course the Probationers should be given specialised training for a period of 16 months at the Departmental Training College.* In the course of this period, practical training should be adequately combined with theoretical instructions. The direct taxes offices at the place where the Training College is situated should be utilised for the imparting of all aspects of practical training. On completion of the 16-months' course in the College, the Probationers should be dispersed to important centres like Bombay, Calcutta and Madras where they should be given further intensive training for a period of at least four months in the practical examination of accounts under the close guidance and supervision of senior officers. Even after the completion of these two years of training, they should first be posted to Group Charges and made to work under the close supervision of Group Assistant Commissioners for at least one year. *We suggest that some credit for the practical experience gained should be specifically given to them in the departmental examination.* This can be done by setting apart a certain number of marks in the Language Test.

8.80. We consider it very important that training should not be confined to equipping the Probationers with technical knowledge only. Due emphasis should also be laid on the building up of personality of the young recruit and moulding him into a public servant, in the true sense of the term. The training programme should also provide adequate instructions in the technique of maintaining good public relations. This is very essential in a revenue department where, in the very nature of things the officers have to perform unpleasant duties. *The institutional training should endeavour to develop qualities of leadership and initiative and inculcate a sense of self-confidence and discipline. Instructions in techniques*

and problem of public administration should also be included in the training course. During the period of their stay in the Training College, the Probationers should be taken on study tours to the various important commercial and industrial centres in the country for a first-hand understanding of the problems, which they would have to handle as assessing officers.

8.81. We were told that the assessing officers promoted from the lower ranks in the Department were not provided with any training whatsoever. In our opinion, it is equally necessary that such officers are given adequate training and equipped to shoulder the higher executive responsibilities. *We, therefore, suggest that persons selected for promotion as assessing officers should undergo a short course for at least six months in the Training College.*

8.82. It was pointed out to us that there were at present no arrangements for providing refresher courses. Having regard to the changes in laws and rules and the modes and methods of work, it is very necessary for the officers to constantly refresh their knowledge and develop better skill. *We suggest that the Training College should arrange a regular refresher course of four months' duration for senior assessing officers with 5 to 8 years service.* The refresher course should cover such subjects as advanced methods of detecting concealments, latest amendments to and enactment of taxation laws, examination of company and other difficult accounts, office management, group leadership, staff welfare and public relations etc. This course should be run on the syndicate system of group discussions and seminars which is the special feature of advanced courses. *We are also of the opinion that it will be of considerable benefit if a good number of selected Assistant Commissioners are sent periodically to the Administrative Staff College at Hyderabad for an all-round advanced course in various aspects of administration and management.* This should be done at the rate of one or two officers for every term of the four months' course.

8.83. As regards the Inspectors and ministerial staff, we understand that certain arrangements have recently been made for imparting training to them on systematic lines in each Commissioner's charge. We feel that this training should also be organised on a more permanent and systematic basis. *We suggest that for the training of Inspectors, four regional centres should be formed each under the charge of senior Income-tax Officer.* Both theoretical and practical training should be imparted to each batch for a duration of six months. The training should aim at imparting a working knowledge of direct taxes laws, accountancy and office procedure. They should be taught the correct methods of conducting surveys, making inquiries and pursuing investigations. Adequate attention should be paid to the technique of examination of accounts of cases in small and middle income groups. Attention should also be given to developing a sense of duty and patriotism and of maintaining good public relations. These regional centres should provide training both to the directly recruited Inspectors as well as to those promoted from the subordinate ranks. For the latter, the training may be restricted to three months.

8.84. *For the training of the ministerial staff, arrangements should be made in each Commissioner's charge, preferably at their respective headquarters.* A selected senior Supervisor should be placed in charge of conducting the training classes and the training programmes may cover a period of three months. Detailed training should be given in office

organisation and procedures, methods of work, maintenance of records and registers, preparation of statistical returns and statements, scrutiny of returns, tax calculations, drafting etc. Greater emphasis should be placed on the practical aspect of training. A sense of discipline and responsibility should be instilled amongst the trainees.

8.85. It is important that the techniques and standards of training at the various centres are uniform and that the instructors themselves are qualified and trained for the job. *For this purpose, the instructors should themselves be made to undergo a short course of training.* The proposed Directorate of Training, Statistics, Research & Publications will be in overall charge of the training programmes of the Income-tax Department. This Directorate will prescribe the courses, organise and supervise the training programmes and prepare necessary training guides and manuals.

8.86. For purposes of promotion, the various posts have been classified into two broad categories, viz. selection and non-selection. Promotions into selection. Promotion to the former category of posts is made on the basis of merit whereas for the latter, the criterion adopted is seniority-cum-fitness. *We have examined this classification and do not consider any changes necessary except that promotion to the cadre of Selection Grade Inspector should be made on the basis of merit and not on seniority-cum-fitness as obtaining at present.* While making promotion to the cadre of Class II Officers, preference should be given to Selection Grade Inspectors who have qualified in the departmental examination for this purpose. *We also suggest that the age limit for promotion to the cadre of Inspectors (ordinary grade) should be raised from 42 to 45. The maximum age for promotion to Class I cadre of assessing officers can be fixed at 50. No restrictions regarding age need be made for promotion to other cadres.*

8.87. The efficiency and success of any system of promotion largely depend on the methods adopted for determining the relative merit and fitness of the candidates. It has been urged that the annual confidential reports, which form the basis of selection for promotion, are defective and do not always give a true and impartial assessment of the merit of the officers concerned. It cannot be denied that personal relationship between the reporting officer and the subordinate members of the staff whose work is commented upon plays considerable part in the writing of confidential reports. We, however, understand that departmental instructions have been issued from time to time that reporting officers should avoid subjective considerations and give a true and correct appraisal of the work of the staff reported upon. These confidential reports are scrutinised by an officer next higher to the reporting officer. The counter-signing officer judges the correctness and objectivity of the report and makes his own comments thereon. Adverse remarks on such reports are communicated to the official concerned and his representation, if any, examined and necessary action taken with regard to the same. We are informed that with a view to eliminating any personal considerations in the selection of persons for promotion, confidential reports covering a sufficiently long period and made by different reporting officers are looked into. This procedure avoids miscarriage of justice and eliminates personal bias, if any, involved in such reports. *We have examined the prescribed forms of confidential reports of various categories of staff and feel that they all need to be rationalised and improved upon.* The present forms do not, in our opinion, provide a

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sufficiently precise and comprehensive information about the merit and competence of the person reported upon. They also leave considerable scope for variations in the standards of reporting. The confidential report form of the gazetted officers is more detailed and better classified. We suggest that similar amplification should be made for obtaining the confidential reports of other categories of staff. *We also consider it necessary that the counter-signing officer should give his own views about the suitability of the person reported upon for promotion to the next higher grade.*

8.88. A necessary condition for an official to be eligible for promotion is that he should have passed the departmental examination prescribed for the purpose. It has been accepted at all quarters that such a condition is essential in the present administrative set up so that due qualification is acquired for efficient discharge of duties in different grades. We, however, wish to emphasise that whereas all reasonable facilities should be provided to the staff in the form of training and supply of necessary literature, for qualifying in the departmental examination, they must not be allowed to neglect their normal office duties. *In no case should they be permitted to use the office hours for preparing themselves to pass the examinations.*

8.89. We are informed that if a junior person passes the prescribed examination earlier than his senior colleagues he gets no priority, whatever, for promotion to the next higher grade. We feel that this system is not desirable as it gives no incentive to the younger element to show its mettle. *In our opinion, seniority for purposes of promotion to the next higher grade should be regulated with reference to the date or the year of passing the prescribed examination.* We understand that similar position obtains in several other services and departments like the Audit & Accounts Department, Defence-Accounts Department etc. Where a number of persons pass the examination on the same date, their seniority *inter se* for the purposes of promotion should be the same as in the grade in which they are presently working. However, the passing of a second higher departmental examination should not entitle a person to any additional priority than the one obtained by him by passing the first examination for becoming eligible to promotion to the next higher grade.

8.90. It has been urged that the present rules which permit a person to take the prescribed examination for a higher grade only if he is actually working in the immediately lower grade need to be changed. There is no doubt that this procedure proves a handicap to the young and energetic members of the staff in qualifying in the different departmental examinations at an early date. However, the taking of a departmental examination has to be necessarily linked with the prospects and eligibility for promotion as otherwise a sense of frustration grows in the junior officials who pass such higher examinations. *We suggest that Lower Division Clerks and Steno-typists who have passed the Ministerial Staff Examination should be allowed to appear for the Inspectors Examination. Similarly Upper Division Clerks and Stenographers who have passed the Inspectors Examination should be permitted to take the Income-tax Officers' Examination. A period of five years should, however, be fixed in both the cases for taking the next higher examination after the person concerned has passed the one lower examination.* We are informed that before the restriction referred to earlier was imposed quite a few number of persons in the ministerial grade had passed the Income-tax Officers'

Examination and there were at present 40 such persons who had not yet been promoted even to the grade of Inspectors. It would be, in our opinion, only fair and just to promote them out of turn to the cadre of Inspectors in preference to others provided they are otherwise fit for promotion.

8.91. We understand that officials who have passed the departmental examination prescribed for the grade next higher to their own but who are not promoted to such higher grade for want of vacancies are granted two advance increments. This is a healthy practice and gives proper incentive to the staff to qualify in the prescribed examinations. However this benefit has not been made available to certain categories of staff like the Steno-typists and Stenographers. In our opinion all categories of staff should be treated alike for this purpose. We also feel that in granting the advance increments, there is no justification in limiting this benefit to the minimum of the payscale of the next higher grade.

CONDITIONS OF SERVICE

8.92. There is considerable dissatisfaction amongst the departmental personnel in regard to their pay and conditions of service. We feel that such a state of affairs adversely affects the service morale and efficiency and needs urgently to be remedied. We presume that the Central Pay Commission would have considered all the aspects of the matter and made suitable recommendations to the Government in this regard. We do not, therefore, consider it proper or necessary to make specific recommendations in respect of the scales of pay, etc. However, we wish to express our views on a few points of particular importance on this subject.

8.93. It was represented that the present structure of the various cadres and scales of pay at various levels were inequitable and unbalanced and required to be so improved as to offer better service conditions to the personnel of the Income-tax Department. It was urged that the officers of the Department who were recruited through combined competitive examinations shouldered no less important and responsible duties than those of the various other services like the Indian Administrative Service, Indian Audit & Accounts Service, etc. Nevertheless, in the matter of suitable service career, remuneration, promotions and other conditions of services, the officers of the Department were unfavourably placed in comparison to those of the other services. Such differentiation is anomalous and adversely affects recruitment and service morale. It has been brought to our notice that a good number of assessing officers had left the Department in the last eight years as they got better service prospects in the private sector. It has, therefore, been urged that the Department should be re-organised so as to provide at least reasonably bright career to its officers and that the scales of pay and other conditions of service should in no way be inferior to those available to officers of the other services including the Indian Administrative Service.

8.94. There is no gainsaying the fact that the efficiency of the Department largely depends upon having a well contented and satisfied service.

In this connection, it is relevant to note the following observation of Prof. Kaldor*:

"An efficient administration requires ability of the Department to attract the best talent and to attract them in adequate numbers. This in turn is very greatly a matter of the conditions of pay and prospects of the service."

We are convinced that the officers of the Income-tax Department in particular require special consideration in respect of pay scales and conditions of service having regard to their nature of work and the difficult duties they have to perform. It is but fair that the pay structure of all ranks, specially in respect of the gazetted officers of this important Department should be commensurate with their powers and responsibilities. At the same time, it is apparent that Government cannot discriminate between the different services in the matter of pay scales. In view of this and of the fact that the Central Pay Commission must have specifically dealt with this matter, we refrain from suggesting any specific improved scales of pay for the different categories of staff in the Income-tax Department.

8.95. Another suggestion made to us in this connection was that officers of the Department should be sent on deputation to other departments and organisations in larger numbers than was being done at present. It was stated that the number of such officers sent on deputation from services like Indian Administrative Service, Indian Audit and Accounts Service etc. was considerably larger as compared to that of the Income-tax Department. We are convinced that the experience gained by the officers of the Department by deputation to various other connected departments like Economic Affairs, Commerce and Industry, Company Law Administration, Forward Market Commission and various industrial and commercial undertakings in the public sector will be of considerable benefit to the Administration. We, therefore, recommend that every effort should be made to depute sufficiently large number of officers of the Income-tax Department to other departments and organisations. It should, however, be seen that officers sent on deputation come back to their parent Department after a specified tenure so that the benefit of their experience is utilised in dealing with tax problems and other officers sent on deputation in their place.

8.96. There is a common complaint that quite often unduly long delays take place in confirming temporary/officiating personnel in the Department. We find that the number of temporary posts in most of the cadres, particularly in the non-gazetted ranks, is quite large in proportion to the number of permanent posts in these cadres. A large number of such temporary posts, both in gazetted and non-gazetted cadres, has been in existence for a number of years. In view of the continuous expansion of the Department there is hardly any likelihood of a reduction in the present strength except in the case of notice servers and Class IV employees as observed by us earlier in this Chapter. The delays in confirmation are due to the absence of sufficient number of permanent posts and failure to fill up even such posts as are available. There is difficulty in payment of salaries to persons holding temporary posts if there is delay in the issue and receipt of authorisations for continuance of such posts. In our opinion, it is not in the interest of the Administration to allow such a position to continue. We suggest that

such of the temporary posts as have been in existence for more than three years and which are not likely to be discontinued should be made permanent. We would also emphasise that whenever permanent vacancies are available, the temporary officials should be confirmed, as early as possible, subject to the usual rules and regulations.

8.97. It was brought to our notice that the departmental personnel were, at times, considerably inconvenienced by frequent and untimely transfers. Though the overriding consideration in transferring a person should be the exigencies of work and the interest of public service, we desire that the personal convenience of the persons concerned should also be kept in view, as far as possible. In our opinion, transfers should not be very frequent, as beside inconveniencing the officers, they also tend to disorganise the work. In order to have a proper grasp of the local business conditions and the affairs of assesseees, it is necessary that assessing officers are kept in a particular charge for sufficiently long time. At the same time, it is a healthy principle that no officer should stay in the same post for too long a period of time. It is also essential that officers should be provided with proper opportunities for gaining experience of different types of work, particularly in the earlier part of their career. *In our view, though the periodical transfers of the officers are necessary, they should not be too frequent.* We suggest that in so far as the motussil charges are concerned, no officer should be allowed to stay in the same station for a period of more than four years at a time. As regards the bigger city circles and headquarters of Commissioners' Offices, a longer stay in the same station may be permitted, but an officer should not be allowed to be in charge of the same post for a period of more than four years. It is also desirable that when an officer is promoted to the next higher grade, he should be transferred from the station as well as from that Commissioner's charge. Transfers of non-gazetted staff should be fewer and they should be allowed to stay at a place for at least four years.

8.98. It was suggested by some witnesses that the initial postings and transfers of Class I Officers should be restricted within certain linguistic zones. In our opinion, it is not necessary to do so as this will be against the spirit of the all-India character of the Service and will also create unnecessary administrative difficulties. We, however, understand that in the matter of postings due consideration is given, even at present, to the knowledge of language possessed by an officer. This factor is very important, as, in the Income-tax Department, a good grasp of the language in which the books of accounts are written in the different places is very essential for doing efficient assessment work.

8.99. Our attention was specifically drawn to the complaints made frequently that before relinquishing charge on transfer, officers did not generally finalise the pending proceedings before them, particularly in difficult cases. This is not only a sad reflection on the Administration and causes delays in disposal of work but also considerably inconveniences the assesseees concerned. We, therefore, suggest that one month's notice of transfers should generally be given to the officers and during this period they must pass final orders in all cases where hearings and investigations have been completed. They should also endeavour to complete as many of the partly heard matters as possible so that there is no duplication of work and consequent harassment to assesseees. In no case should they take up fresh work unless the fully and partly-heard cases are disposed of. *In order to see that this is done, we suggest that before handing over charge on transfer, officers of all ranks should be required to send to their*

immediate superior officers a certificate to the effect that all fully heard cases have been disposed of. A list of the partly completed work with full details and reasons for the pendency should also be furnished by such officers. This certificate should form part of the handing over note to be given to the successor-in-office, and copy thereof should be sent to the immediate superior officer.

8.100. It has been brought to our notice that there is considerable delay in the payment of leave salaries to the staff. This factor itself acts as a disincentive to persons from taking leave. We suggest that Government should streamline the procedures with a view to eliminating such delays. Various staff associations have also represented that when persons are transferred from one charge to another, they do not receive their salaries for two months or so on account of the delay in the issue of last pay certificates, pay-slips etc. Certain senior officers have brought to our notice that inordinate delays have also occurred in the settlement of pension, gratuity and provident fund claims. There is the instance of a senior officer, who retired in February 1958 but could not receive his pension or gratuity claims nor even his provident fund monies until July 1959. Delays in payment of salaries cause considerable hardship and when a person goes on leave or is transferred he is put to extra expenditure and the non-receipt of his pay causes undue hardship. We would strongly recommend that the Government should, in consultation with the Comptroller and Auditor General, devise ways for eliminating such delays. We understand that in spite of the special instructions on this subject enjoining upon audit officers as well as heads of departments to see that such claims are settled expeditiously, the matter does not seem to have improved. We, therefore, suggest that the whole question should be reviewed and special measures taken at least for the early payment of providential pension, gratuity and provident fund monies.

8.101. It was pointed out to us that departmental personnel experienced considerable difficulties in their work of survey and outdoor enquiries for want of adequate conveyance facilities. We are told that except for a very small number in Bombay and Calcutta, officers engaged in such work are not entitled to any conveyance allowance. The only other facility provided by the Government is the grant of loans to certain categories of personnel for the purchase of a conveyance, but even such advances, it is said, are not easily available for want of sufficient funds. We suggest that adequate funds should be set apart for granting such loans. We do not favour the suggestion that the Department should have its own transport i.e. cars, jeep, etc. in important places. This facility is likely to be mis-used and moreover, will not adequately solve the problem. In our opinion, all the staff employed in survey and outdoor enquiry should be given suitable conveyance allowance. Besides the Inspectors, the assessing officers posted in Special Survey Circles should also be given an adequate conveyance allowance. Though it is not necessary to give any fixed allowance for conveyance to other officers, who are not generally required to perform outdoor duties, they should be re-imbursed for the expenses actually incurred by them for such purposes.

8.102. With regard to the question of accommodation for the officers and staff on tours, it has been pointed out to us that more often, than not, the officers of the Department found it difficult to get allotment in the Circuit and Rest Houses and Dak Bungalows which were under the control of the State Governments. This was particularly so as

officers of the State Governments, though in lower status, were given preference in regard to accommodation in such cases. In addition, there were also, at some places, differential rates of charges for the Central and State Government officials for utilising such accommodation. As for instance we find that in one of the States while officers of that State have not to pay for accommodation in a Rest House more than Rs. 1.50 nP per day, a Central Government officer is charged for the same accommodation Rs. 5.75 nP. This is a very anomalous and unsatisfactory position and results in Central Government Officers being out of pocket when going on tour on official work. We suggest that suitable arrangement should be made with the State Governments so that there is no discrimination against Central Government officers on tour in the matter of providing and charging for accommodation in *Dak Bungalows* and Rest and Circuit Houses. There is also need for reviewing the rates of charges recovered from officers and staff who, during tours, use office accommodation for purposes of their stay.

8.103. Difficulties are also experienced by the officers and staff of the Department in the matter of housing. In view of the general shortage of residential accommodation at almost all the stations where the tax offices are situated, officials have not only to pay very high rents but are also at times unavoidably driven to undergo obligations of influential assesseees in getting suitable accommodation. The impartiality and integrity of the officers are, in consequence, questioned by the misinformed public. This has naturally a demoralising effect on the officers concerned. We understand that the Department has been trying to construct residential accommodation both for the gazetted and non-gazetted staff at various stations, but its efforts have been greatly hampered for want of adequate funds. In our opinion, it is very important that the employees of the Revenue Department are provided with suitable and adequate residential accommodation by the Government. We, therefore, suggest that sufficient funds should be allotted for the construction of residential houses for the officers and staff of the Income-tax Department. Further, so long as the Government is not able to construct adequate number of residential quarters, it should itself hire suitable accommodation and let it out to the Departmental personnel as is obtaining in Delhi, Bombay and Calcutta where Estate Officers requisition necessary accommodation for the officers of the Central Government. We understand that the Defence Service and Railways have made arrangements for hiring accommodation for their employees. In this connection, the State Governments may be requested to extend their fullest co-operation in the matter. Besides doing away with any discrimination in respect to housing, between the State and Central Government employees, the State Governments should in particular be requested to make the accommodation vacated by an officer of the Department, who has been transferred, available to his successor in office.

8.104. Serious difficulties are experienced by the Government servants in the matter of education of their children when they are transferred from one place to another. Overcrowding of educational institutions, and difference in syllabii, sessions of study and media of education are some of the factors that create considerable hardship and affect the education of the children of the staff. Provision for adequate educational facilities for all the children is admittedly the responsibility of the State. The Government owes it all the more to its employees that the education of their children does not suffer for no fault of theirs. We

feel that the present difficulties could be considerably mitigated if the Central Government organise schools in the various important cities and towns for the children of its employees. All such schools should have a common medium of instruction, preferably the official language, and uniform curricula and syllabii for the various classes so that even if an officer is transferred in the middle of an academic year, his children could be admitted straightaway in the school at the new station without suffering any break in their education. The final examination of such schools should be conducted by an all-India body or the Central Ministry of Education and recognised by the Central and State Governments as well as Universities as equivalent examination run by the States Secondary School Boards or the Senior Cambridge Board. So long as such schools are not set up in adequate numbers, arrangements should be made with the State Governments and important educational institutions for securing priority for admission of the children of a Government officer on transfer.

8.105. Our attention was also drawn to the insufficiency of medical aid provided to the Government servants. **Medical facilities** The rules for availing of medical facilities are very cumbersome and differ from place to place. It is complained that the authorised Medical Attendants are not generally easily accessible. Government servants are usually obliged to first incur expenses from their own pockets which they may not be able to afford in the present difficult times. With regard to the contributory health service scheme which is in operation in Delhi, dissatisfaction has been expressed on the ground that medical assistance is not available at all times and is not of sufficiently high quality. *We would urge that these grievances should be suitably redressed and adequate medical facilities should be afforded to the staff of the Department.*

8.106. Provision of cheap holiday homes at hill stations and other health resorts will be of considerable benefit for rest and recreation of the Government servants. We understand that several other departments like the **Holiday homes** Railways, Defence, Posts & Telegraphs, provide such facilities to their employees. Some of the State Governments have also arranged for such holiday facilities. We suggest that the Department should make arrangements for constructing or hiring buildings at important hill stations for use as holiday homes and let them out at reasonable rents to its employees desiring to recoup their health from the strain of hard work which the Income-tax Department necessarily entails.

8.107. Willing co-operation and a sense of responsibility on the part of the employees is highly essential for successful and efficient functioning of any organisation. Our **Staff relations and** **Welfare activities.** personal visits to the tax offices and the evidence given by the Staff Associations revealed to us that a sense of dissatisfaction existed amongst the non-gazetted personnel of the Department. We appreciate that the members of the staff at all levels in the Department have to perform onerous and unpleasant duties. Sympathetic understanding of the personal difficulties of the staff and a spirit of goodwill and comradeship in the day-to-day work is essential for building up good staff relations. It is the primary duty of the superior officers to develop a spirit of fellowship and a sense of satisfaction amongst the staff working under them. We are informed

that the Department has been encouraging various staff welfare activities and giving financial assistance for the organisation of sports and recreational facilities. Welfare Officers have been appointed at some places like Bombay, Calcutta and Delhi. Staff Benevolent Fund has also been started. *These activities are in the right direction and we desire that they should be further strengthened and enlarged so as to improve the welfare aspect of the staff.*

8.108. The various grades and classes of the gazetted and non-gazetted staff of the Department have organised themselves into staff associations for promoting good service traditions and advancing their legitimate interests and aspirations. We are informed that the Central Board of Revenue and the Commissioners sympathetically look into the grievances placed before them by the staff associations and take necessary steps to remove them, wherever justified. A suggestion for the introduction of the system of Whitely Councils as obtaining in the United Kingdom was mooted before us. The objects of these councils are defined in the following terms :

"To secure the greatest measure of co-operation between the State in its capacity as employer, and the general body of civil servants in matters affecting the Civil Service, with a view to increased efficiency in the public service combined with the well-being of those employed; to provide machinery for dealing with grievances, and generally to bring together the experience and different points of view of representatives of the administrative, clerical and manipulative Civil Service".*

We understand that the Government has already set up, on similar lines as Whitely Councils, Staff Committees in the different Ministries with a view to having joint consultation on various administrative matters. This is a step in the right direction and requires to be extended. We suggest the Staff Committees should also be constituted in all Commissioners' charges at their respective headquarters. These Committees may be extended later on to lower formations so that joint consultations can be had at all levels for improving staff relations.

8.109. Complaints have been made from some quarters with regard to the lack of proper discipline and sense of responsibility amongst the staff at different levels. Though we realise that this matter is not peculiar to the Income-tax Department and reflects the general climate in the country, necessary steps are required to be taken by the Government to counter this harmful tendency. A re-examination of the service conduct rules and disciplinary procedures is necessary and we suggest that the Government take proper measures in this regard. It is essential that employees of the Government work with a sense of patriotism and a spirit of public service. We wish to stress that cases of indiscipline and lack of a sense of responsibility should be promptly looked into and due steps taken to punish the wrong doers wherever necessary.

OFFICE EQUIPMENT AND ACCOMMODATION

8.110. We received numerous complaints from official as well as non-official witnesses about the paucity of elementary office requirements like adequate accommodation, furniture, stationery, forms, typewriters

and other equipment and appliances. In order to have an efficient administration and good public relations, it is essential that the staff is given adequate supply of necessary equipment for carrying out their day-to-day activities. *Improved facilities of office accommodation and necessary supply of equipment and appliances will not only better the working conditions of the staff but will also give convenience to the assessee and result in increased efficiency in administration.*

8.111. The greatest difficulty experienced in this regard relates to the supply of stationery and forms which vitally affect the day-to-day activities of the Department. The Income-tax Investigation Commission had also adversely commented on this drawback. The figures furnished to us by the Central Board of Revenue show that the Controller of Stationery supplied stores to the extent of only 36 per cent of the Department's requirements indented during the financial year 1958-59. The percentages were even lower in the earlier years being 34, 28 and 30 during 1955-56, 1956-57 and 1957-58 respectively. The position is equally bad in regard to the supply of standardised forms. Failure to supply the various forms and necessary stationery in time and to the extent required clogs the entire administrative machinery and considerably delays issue of statutory notices, finalisation of assessments and collection of revenue. The main reason for this highly unsatisfactory state of affairs appears to be that the increase demand, with the vast expansion of the Government machinery and its activities, cannot be fully met by the supplies currently available. This necessitates some order of priority in meeting the demands of the various departments. *In our opinion, the requirements of revenue departments must be given a sufficiently high priority so that the collection of taxes is not held up on any account. We suggest that the responsibility for arranging supply of stationery and printing of forms, etc. for the central revenue departments should be entrusted to a separate section of Printing & Stationery which may, if necessary, function under the overall control of the Chief Controller of Printing & Stationery. The departmental authorities should intimate their requirements at least six months in advance and if these are not met within this period, Commissioners should have full financial powers to effect purchase of stationery locally or to get the required forms of those items printed to the extent to which they are short supplied. For this purpose it should not be necessary, at that stage, for them to obtain a no objection certificate from the Controller of Printing & Stationery or to have the rates approved by him. It should, however, be administratively seen that the local purchases and printing are effected at the best competitive rates. We also suggest that in order to avoid delays, adequate financial powers be given to the subordinate authorities for making such local arrangements. We do not endorse the proposal put forward by some official witnesses that the Department should have its own printing press, as it would involve additional cost.*

8.112. We are surprised to find that the Department has taken little advantage of the rapid advancement in the field of modern office equipment and appliances. Even such essential requirement as typewriters are said to be not available in sufficient numbers in the tax offices. *With the increased workload, it will not only quicken disposal but also result in greater accuracy and reliability if the old manual methods are replaced by the modern mechanical aids, wherever found economical and necessary. We suggest that at least typewriters should be supplied adequately to all tax offices. Various other modern appliances like addressing*

machines, duplicators, calculating machines, comptometers, photostatic machines, etc. should be supplied to all such offices, looking to the needs and exigencies of work.

8.113. In the course of our enquiry, we visited a number of tax offices at different places and found that in most of them the accommodation was unsatisfactory. Offices were found to be generally overcrowded and the accommodation provided was inadequate for both the staff and the visiting public. We appreciate that the efforts of the Department to provide reasonably decent accommodation in all tax offices either by constructing its own buildings or by hiring them have been considerably handicapped by paucity of funds and the various restrictions imposed by rules and regulations. We lay great emphasis on the provision of proper and adequate office accommodation, as it will, not only lead to better conditions of work, but also remove inconveniences caused to the taxpayers. We suggest that sufficient funds should be specifically allotted for the construction of office buildings for the revenue Departments and the rules regarding hiring of private accommodation be also suitably liberalised. We would also like to emphasise that proper attention should be paid to the lay out and situation of offices and future needs of expansion, and in this regard, the revenue administration should ordinarily have the final say. It is also important that the tax offices should be adequately furnished with the necessary furniture. Steel almirahs with safety locks should be provided to each tax office, for keeping all important and confidential records.

COST OF COLLECTION

8.114. Of late, there has been some criticism in the Parliament as well as the general public about the increase in the expenditure of tax administration without a proportionate rise in the revenues collected. The figures furnished by the Central Board of Revenue in regard to the taxes collected and the cost of administration during the last six years are given in the following table:

TABLE II.—COST OF COLLECTION IN RELATION TO REVENUES COLLECTED

Financial Year	Revenues collected (in crores)	Total cost of collection (in crores)	Cost of collection as percentage of revenue
	Rs.	Rs.	Rs.
1953-54	164.33	3.24	1.96
1954-55	160.40	3.50	2.19
1955-56	170.21	3.82	2.24
1956-57	205.03	4.25	2.08
1957-58	229.17	4.65	2.04
1958-59	236.09 (Provisional)	5.11	2.16

The amount of revenues collected as given in this table represent the net figures of taxes realised after excluding the refunds given from gross collections. Granting of refunds also necessarily entails expenditure and if the cost of collection is related to the total gross collections, we find that the relevant percentage is not only much less but there is practically no increase therein since 1954-55 when it stood at 1·8 per cent.

8.115. The Central Board of Revenue has explained to us the various factors which have contributed to the increase in the cost of administration. *On examination, we feel satisfied that the increase was justified and necessary.* In the War years and immediately thereafter the revenue had increased steeply on account of the War time profits and the introduction of Excess Profits Tax. The collection of the additional tax in those years did not involve much extra efforts. The growth in the complexity of work, the measures taken to check tax evasion and the increasing tempo in the disposal of assessments and appeals have contributed to the need for an increase in man power. The increase in cost is also due to the improved facilities for training and revision of pay scales. Lowering of the taxation limit and introduction of the integrated tax structure by enactment of various direct taxes laws have also a bearing on the increase in the cost of collection. A number of tax concessions have been given resulting in lower demand, but at the same time leading to some increase in the volume of work. There are also various other factors which have contributed to the increase in the cost of collection. We may point out that from the very nature of things much of the extra expenditure incurred was not expected to yield immediate returns and the overall picture is required to be taken over a long period of the working of the present integrated structure of taxation.

8.116. *We fully agree that the cost of administration should be kept as low as practicable.* However, a low administrative cost is not *per se* an indication of a good tax agency. It has to be recognised that there is nothing like a fixed and constant ratio between the revenues collected and the cost incurred. As the reputed American authorities on public finance have observed "What ratio-primary administration costs bear to tax collections depends upon a number of factors—the tax imposed, the efficiency of the administration and the intensity of administrative effort..... Low tax costs resulting from administrative indifference are as much an indication of injury to the tax-paying public as high costs resulting from inefficiency".* Difference in the tax structure and the provisions and rates of taxes, the economic and social conditions obtaining in the various countries and other factors make a comparison of the cost of collection of revenues invidious. As remarked in a U.S.A. publication "Standards of integrity, competence, absolute fairness and performance should no where in the Government service be higher than that in the Bureau. The attainment and maintenance of these standards cost money—a great deal of money. The alternative, however, a cheap tax administration costs in the long run more than any nation can bear"@. Many witnesses opined against any misguided economy and laid stress on the necessity of increased expenditure with a view to having a more effective and efficient administration. The Income-tax Investigation Commission and Prof. Kaldor had also drawn pointed

* American Public Finance – 6th Edition, 1954 – by Prof. Sultz and Harris—pages 230
232.

©Report of the Advisory group on the investigation of the Bureau of Internal Revenue submitted to the Joint Committee on Internal Revenue Taxation, 1948—page VII

attention to this aspect of the matter. We have earlier suggested measures for a better and more effective utilisation of the resources available with the Department. However, some of our suggestions would involve extra expenditure and we consider that this is necessary for checking tax evasion and improving the overall efficiency of the Department. We must emphasise that such an additional expenditure is absolutely necessary and will, in our opinion, pay good dividends in future.

PREVENTION OF MALPRACTICES

8.117. *Highest standards of integrity, honesty and fairplay are essential in all Government departments. The stakes involved in a revenue department are very high and, therefore, a very strict vigilance is called for. Allegations of malpractices, including corruption, are often made against tax administration. It is difficult to estimate, with any reasonable degree of accuracy, the extent of this malady. It has been suggested that one way of judging the incidence of corruption would be to analyse the complaints of malpractices received by the Central Board of Revenue against the officials of the Department. From the table given earlier in para 8.19, it is seen that during the financial year 1958-59 complaints of corruption and malpractices were made against 238 tax officials, both gazetted and non-gazetted. This number works out at only 1.3 percent of the total strength of the employees of the Department. Apart from this, a majority of the complaints was found to be unjustified and baseless. Out of a total of 242 complaints enquired into during 1958-59 as many as 211 which work out at 87 per cent were found to be untrue. There are, however, serious limitations to the above method of judging the magnitude of corruption on the basis of the number of complaints, justified or unjustified, received against the officers. In a taxing department, by the very nature of things, the majority of anonymous complaints are from dissatisfied assesseees who send them with the object of harassing honest officers. These figures should not, therefore, lead the Department to become complacent and have the feeling that there is no corruption because, as a rule, complaints against dishonest officers are rarely lodged. Where there is actual corruption, the assesseees are generally in league with dishonest officers and as the former would be only exposing themselves in such cases, they would not normally send any complaints. Viewed from this angle, it will be incorrect to go on the basis of the number of complaints received and the number in which action was found necessary.*

8.118. *Malpractices in a revenue department arise mainly out of the desire on the part of assesseees to evade or reduce their due liability to tax. Fear of harassment at the hands of tax officials and of the inconvenience caused sometimes by the lengthy and complicated procedures under the tax laws also contribute to malpractices. It is, therefore, essential for the Department to see that it has a strong and effective machinery, so that the chances of leakage of revenue are reduced to the minimum. At the same time, the procedures and the methods of work of the Department should be so designed as not to cause any fear of harassment or inconvenience to the assesseees. We do feel that a growing awareness amongst the assesseees as to their legitimate rights and obligations and an atmosphere of mutual confidence and cooperation between the officials and the taxpayers will go a long way in checking malpractices and corruption. The suggestions made by us in the different parts of the Report will help in achieving these objectives.*

8.119. It is also essential for a tax administration to provide adequate safeguards, both preventive and punitive, to check officials from resorting to malpractices. Instructions are issued from time to time by Government in the various departments with regard to the code of conduct to be observed by public servants. We have earlier dealt with the duties and functions of the Directorate of Vigilance in this regard. *Besides the Central organisation, it would be necessary to have vigilance sections in each Commissioner's charge for organising and co-ordinating the vigilance work and disposing of enquiries into complaints expeditiously.* As we have already emphasised that temptations and scope for indulging in corrupt practices are indeed very great in a tax administration and, therefore, for maintaining the highest standards of morality and integrity, it is necessary to keep a constant vigilance over the personnel working in the Department. It is, no doubt, true that the question of improving the standards of integrity in any administration is vitally linked with the raising of moral climate of the nation as a whole. At the same time, it cannot be denied that it is up to the Government servants, who hold positions of responsibility and trust to set up high standards of unimpeachable integrity and fairness. It is well said, "It is not enough to act with integrity. Justice, it has been said, must not only be done, but must be seen to be done. So too, moral standards must not only be observed but must be seen to be observed".*

8.120. The Central Civil Services (Conduct) Rules, 1955 lay down certain salutary regulations in this regard which are obligatory on all Government servants. Under these rules prior intimation to the prescribed authority is required to be given by a Government servant regarding acquisition or disposal of any immovable property. However, if such a transaction is conducted otherwise than through a regular or reputed dealer, previous sanction is necessary in the matter. In respect of movable property exceeding Rs. 1,000 in value, report of such transaction has to be made to the prescribed authority if the transaction is through a regular or reputed dealer or agent and if it is not, previous sanction is necessary in the matter. All gazetted officers and Inspectors serving in the Income-tax Department have to send every year statements of immovable properties owned by them. Rules are also laid down with regard to acceptance of gifts on weddings and other functions. These requirements, no doubt, enable the Government to have some supervision over the acquisition and disposal of assets by the employees. We, however, wish to emphasise that these measures should be made more effective. *We suggest that all officials of the Income-tax Department should be required to send every fourth year a complete statement of their total wealth, both immovable and movable, including those in the names of wife and children and other family members.* These statements should be thoroughly scrutinised by the Vigilance Section so as to satisfy that the additions to their wealth are fully justified, having regard to their income, expenditure and other relevant factors. Superior officers and the Vigilance Section should keep a thorough watch over the standard of living of the subordinate staff in order to bring to book persons whose expenses are disproportionate to their incomes. *We also suggest that jurisdiction for assessment to income-tax of the gazetted officers of the Department should be centralised in a circle at headquarters.*

8.121. While discussing earlier the service conditions of the staff of the Department we have suggested various measures for improving

* Report on Public Administration by A.D. Gorwala, 1951, page 12.

their amenities and facilities. The implementation of these proposals will enable the taxing officers not to be under the obligations of taxpayers in the matter of securing residential accommodation, education of their children, and conveyance facilities, etc. *We also wish to emphasise that accepting of gifts on weddings and other occasions from other than relations or close friends and the acceptance of private hospitality, free entertainments and other obligations from the public should be strictly discountenanced.* There are already rules and instructions in this regard and it should be the duty of the senior officers to see that they are strictly observed, and that in these matters they themselves set an example to their subordinates.

8.122. In this connection we wish to stress the fact that it is equally essential to maintain the high morale and to add to the sense of self-respect and dignity of the officials who are performing public duties. No doubt, in a democratic set up, the administration is open to public scrutiny and criticism, but nothing is, however, more damaging to the morale of the honest civil servants as uninformed and unwarranted criticism of a sweeping nature. The growing tendency among the public to send anonymous and pseudonymous petitions and complaints which are *mala fide* and made mainly against honest officers should be discouraged and deprecated. The very fact that a report is called for from the officer concerned or higher authority, as a result of the petition or complaint, affects the morale of the officer. We have to record that, mainly because of this, a tendency is growing among officers to shirk responsibility and avoid taking decisions on their own. This is too serious a development to go unnoticed. *In our opinion, undue importance, particularly in a taxing department, should not be attached to anonymous and pseudonymous complaints and that nothing should be done which disturbs the morale of the officers in the discharge of their duties.*

8.123. It was brought to our notice that in the past few years some of the assessing officers had been leaving the Department, after a few years of service, to take up employment in private firms. This has serious consequences as instances have come to notice of an assessing officer joining the service of one of the firms which he had been assessing. We strongly disapprove of this tendency, as it might lead to abuse of his powers and even corruption. Even if no favour has been shown to the would-be employer, there is the loss to the State of the services of officers who have been trained at considerable expense from the public exchequer. *We, therefore, suggest that the Government should take a policy decision in the matter and take measures for preventing such employment.*

8.124. A suggestion has been made to us that it is necessary to have in the tax laws a specific provision on the lines of Section 13(3) of the United Kingdom Income-tax Act; 1952* opinion has been very sharply

*An inspector or surveyor who—

- (a) wilfully makes a false and vexatious surcharge of tax ; or
- (b) wilfully delivers, or causes to be delivered, to the General Commissioners a false and vexatious certificate of surcharge, or a false and vexatious certificate of objection to any supplementary return in a case of surcharge ; or
- (c) knowingly or wilfully, through favour under—charges or omits to charge any persons or
- (d) is guilty of any fraudulent, corrupt or illegal practices in the execution of his office, shall, for any such offence, incur a penalty of one hundred pounds and on conviction shall be discharged from his office.

divided about the desirability and necessity of such a provision. Those in favour of the proposal emphasised that such a measure would provide a healthy check against malpractices of high-handed and corrupt officials. On the other hand, it was stressed that such a provision would tend to demoralise the tax officials and they would avoid taking risks and responsibilities under the taxing statutes. It was pointed out to us that provisions in this regard in the U.K. Act have been practically a dead letter. It was urged that such a provision might give an easy handle to unscrupulous persons to harass the honest officials and lead to demoralising and discouraging them from firmly and fairly discharging their duties. It was also stressed that the Central Civil Services (Classification, Control and Appeal) Rules, 1957, the Prevention of Corruption Act, 1947 and the relevant provisions of the Indian Penal Code provide even stricter penalties for such offences and malpractices.

8.125. We have given very careful thought to this suggestion and feel that such a provision will, on the whole, have wholesome effect. Apart from serving as a check on the malpractices of the dishonest, high-handed and unreasonable officials, it would create a fund of confidence amongst the public in the impartiality and fairness of the Administration. We, therefore, recommend (Shri K. S. Sundara Rajan dissenting) that the provisions similar to Section 13(3) as well as Section 7(7)* and 50(1)@ of the U.K. Income-Tax Act, 1952, should be incorporated in the direct taxes statutes. But with a view to safeguarding any misuse of these provisions, we suggest that all complaints arising under these Sections should be first made to the Central Board of Revenue, who should institute necessary departmental enquiries into the allegations. If the Board is satisfied that there is a *prima facie* case for taking action against the officer concerned, it should initiate proceedings under these provisions.

REPRESENTATION OF ASSESSEES BY TAX EXPERTS

8.126. Tax-payers have often to seek expert advice in complying with the requirements of the tax laws which are too technical and complex for laymen to understand. The taxing statutes authorise certain classes of representatives to appear on behalf of assessee. Section 61** of the Income-tax Act and

*Section 7(7) : A clerk or clerk's assistant who--

(a) wilfully obstructs or delays the execution of this Act, or

(b) negligently conducts or wilfully misconducts himself in the execution of this Act, shall incur a penalty of one hundred pounds, and shall be dismissed from his office, and be incapable of again acting as clerk or clerk's assistant.

@Section 50(1) : Save where expressly authorised by this Act, the General Commissioners shall not alter any assessment before the time for hearing and determining appeals, and then only in cases of assessments appealed against, and in accordance with their determination; and if the clerk to the Commissioners or any other person makes, causes or allows to be made, in any assessment, any unauthorised alteration he shall incur a penalty of fifty pounds.

**61. Appearance by authorised representative.

(1) Any assessee, who is entitled or required to attend before the Appellate Tribunal or any Income-tax authority in connection with any proceeding under this Act otherwise than when required under section 37 to attend personally for examination on oath, or affirmation, may attend by a person authorised by him in writing in this behalf, being a relative of or a person regularly employed by the assessee, or a lawyer or accountant or Income-tax practitioner, and not being disqualified by or under sub-section (3).

(2) In this section, --

(i) a person regularly employed by the assessee shall include any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings;

the corresponding provisions of the other direct taxes Acts enumerate the persons who are entitled to act as such representatives and the qualifications necessary for doing so. At present, besides a relative or an employee, three categories of persons, viz., lawyers, accountants and Income-tax Practitioners are entitled to act as authorised representatives of the assessee.

8.127. It has been urged from some quarters that with a view to improving the quality of representation only lawyers and qualified accountants should be authorised to represent assessee and that Income-tax Practitioners who have different academic qualifications and status should be debarred from practice. We find that in most of the other countries only lawyers and qualified accountants are authorised to represent assessee in tax matters. As an American author has observed "Tax practice in its most difficult manifestations is a speciality, just as surgery is a speciality of medicine and the specialists should be trained in both accountancy and law".* However, we find that in our country not only is the number of Chartered Accountants and lawyers engaged in tax practice limited but also that the majority of the assessee can ill-afford to pay the comparatively high fees charged by them. *We have given careful consideration to this matter and, we feel, that if the right to represent assessee is restricted only to Chartered Accountants and lawyers, it would cause undue hardship to the small income assessee who form the bulk of the Indian tax-payers.*

8.128. Though we have suggested that Income-tax practitioners should continue as a class of tax representatives, we feel, at the same time, that the quality of such practitioners should be improved by prescribing higher qualifications than those provided at present under Section 61 of the Income-tax Act. *We suggest that in future the minimum academic qualifications for an Income-tax Practitioner, should be a degree in commerce of any of the recognised Universities. In addition, such a person should be also required to pass a written examination in accountancy and tax laws, to be held by the Department. The Central Board of Revenue*

(Section 61 continued)

- (ii) "lawyer" means a Barrister-at-Law or Solicitor or any other persons entitled to plead in any Court of law in the taxable territories;
- (iii) "accountant" means a registered accountant enrolled in the Register of Accountants maintained by the Central Government under the Auditor's Certificate Rules, 1932, or a holder of a Restricted Certificate under the Restricted Certificate Rules, 1922, or a member of an association of accountants recognised in this behalf by the Central Board of Revenue;
- (iv) "Income-tax Practitioner" means—
 - (a) any person, who, before the 1st day of April, 1938 in the taxable territories or before the 1st day of April, 1949, in any of the merged territories or before the 1st day of April, 1950, in any Part B State other than the State of Jammu and Kashmir or before the 14th day of May, 1954, in the State of Jammu and Kashmir attended before an Income-tax Authority on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee;
 - (b) any person who has passed any accountancy examination recognised in this behalf by the Central Board of Revenue; or
 - (c) any person who has acquired such educational qualifications as the Central Board of Revenue may prescribe for this purpose.

(3) No person who has been dismissed from Government service after the 1st day of April 1938, shall be qualified to represent an assessee under sub-section (i); and if any....

* Successful Tax Practice, Third Edition, 1956 by Hugh C. Bickford, pages 8-9.

should prescribe curricula of a sufficiently high standard and fix reasonable fees for appearing in these examinations. We understand that in several countries like U.S.A., Japan etc. tax practitioners are required to pass an examination held by the taxing authorities before being allowed to practice. However, the existing Income-tax Practitioners should be allowed to continue as tax representatives irrespective of their qualifications and should be exempted from taking this test. We also recommend that Income-tax Practitioners, both existing and new, should be permitted to represent tax-payers in respect of all the direct taxes laws.

8.129. With regard to Lawyers we feel that the present definition of 'lawyer' under Section 61(2) (ii) of the Income-tax Act should continue to hold good. We suggest that accountants other than Chartered Accountants, who, by virtue of Section 226(2) of the Companies Act, 1956, are entitled to be appointed to act as auditors of companies registered in a particular State, should also be allowed to represent assesseees in tax matters.

8.130. Another question posed before us was whether persons, who have either retired or resigned from the Department, should not be debarred from representing assesseees before the direct taxes authorities, even if they are otherwise qualified to do so. We feel that denial of the right to such practice will cause hardship to those departmental personnel who are qualified to represent assesseees and have to live on small pensions after retirement. Moreover, utilisation of the experience and knowledge of such persons may in some cases be of advantage to the Department as well as to the assesseees. We, therefore, agree with the views of a large majority of our witnesses that it would be neither practicable nor desirable to completely prohibit such persons from tax practice. We believe that the following and other measures suggested by us elsewhere will be sufficient for safeguarding against any abuse of their position by such persons. With a view to ensuring that Departmental personnel do not show undue favours to assesseees on the eve of retirement or resignation or otherwise canvass for clientele, we consider that it would be desirable to impose reasonable restrictions on their right to tax practice. We suggest that no official of the Department should be allowed, without the previous permission of the Central Board of Revenue, to represent tax-payers for a period of two years after retirement or resignation. The Board should give the permission subject to the condition that the person concerned will not be entitled to tax practice in the State or the Commissioners' charges where he had served at any time during the three years immediately preceding his retirement or resignation. As regards the officers having all-India jurisdiction like the Directors, permission for tax practice should be given to

(Section 61 continued)

lawyer or registered accountant is found guilty of misconduct in connection with any income-tax proceedings by the authority empowered to take disciplinary action against members of the Profession to which he belongs, or if any other person is found guilty of such misconduct by the Commissioner of Income-tax, the Commissioner of Income-tax may direct that he shall be thenceforward disqualified to represent an assessee under sub-section (1):

Provided that—

- (a) no such direction shall be made in respect of any person unless he is given a reasonable opportunity of being heard,
- (b) any person against whom such direction is made may, within one month of the making of the direction, appeal to the Central Board of Revenue to have the direction cancelled, and,
- (c) no such direction shall take effect until one month from the making thereof, or when an appeal is preferred, until the disposal of the appeal.

them on the further condition that they should not represent assesseees whose cases have been dealt with by them during the three years preceding their retirement or resignation. The officers, who desire to resign and engage in tax practice within a period of three years of their joining the Department should not be subjected to any such restriction. We recommend that the relevant civil service regulations and/or the direct taxes Acts should be suitably amended to permit the imposing of such restrictions.

8.131. We understand that in several other countries like U.S.A., Australia, Japan, etc., tax experts have to be necessarily registered with the authorities concerned. The mere fact that certain categories of tax representatives such as chartered accountants and lawyers are registered elsewhere for other purposes is, in our opinion, no justification for not requiring them to seek registration with the direct taxes Department. Such persons are entitled to tax practice not in their own right as lawyers and chartered accountants but because they have been authorised to do so under specific provisions in the direct taxes Acts. Moreover, all lawyers and chartered accountants are not engaged in tax practice and in order to know which of them are actually doing so, it is necessary that they should be registered with the tax authorities. We are, therefore, of the opinion that the admission of the various classes of professional experts to tax practice should be regulated by a system of registration with the Department. In respect of lawyers who are entitled to practice in Courts of law and chartered accountants enrolled under the Chartered Accountants Act and entitled to practice, registration should be automatic. We suggest that registration should be done at the level of Commissioners and the Central Board of Revenue may frame suitable rules for this purpose.

8.132. It was urged before us that with a view to securing high standards of integrity and honesty on the part of the tax representatives, the Department should have a direct and effective authority for taking disciplinary action in cases of misconduct. Section 61(3) of the Income-tax Act envisages disciplinary control of the Commissioners of Income-tax only in respect of Income-tax Practitioners. Chartered Accountants and Lawyers are not subjected to any direct disciplinary control of the Department. The taxing authorities can only bring such cases to the notice of the Institute of Chartered Accountants in accordance with the Chartered Accountants Act, 1949, or of the High Court under the Bar Councils Act, 1926. The Income-tax Investigation Commission had also adversely commented on the existing procedure relating to the disciplinary action against tax representatives. We find that the tax authorities in several other countries exercise direct and strict disciplinary control over tax experts. In U.S.A., Australia and some other countries, besides the registration of tax representatives, sufficient powers for taking disciplinary action against them in cases of misconduct are given to the tax authorities.

8.133. We have no doubt that a large majority of the tax experts maintain the highest standards of integrity and efficiency associated with their important profession. They form a vital link between the tax-payers and the Department and the manner and extent of tax collection depend considerably on their effective and honest representation. There have been complaints that there are a few tax representatives who assist or aid their clients in malpractice and play a role of middlemen between the tax evaders and unscrupulous officers. On careful examination, we are convinced that with a view to successfully tackling the menace of tax evasion, removing malpractices and corruption and having an effective and efficient

administration, it is necessary to vest in the direct tax authorities some powers of disciplinary control over all classes of tax representatives. *Disciplinary jurisdiction over the Income-tax Practitioners should continue to remain with the Commissioners, who should use their authority with greater vigilance.*

8.134. It was urged before us by some witnesses that the disciplinary jurisdiction over lawyers and chartered accountants in respect of their practice before the direct taxes authorities should vest in the Central Board of Revenue. *We see no reason why the ultimate jurisdiction of the High Court as provided for under Section 10(1) of the Bar Councils Act, 1926 and Section 21 of the Chartered Accountants Act, 1949, in this matter should be taken away.* However, in view of the fact that lawyers and chartered accountants are not, as a matter of right, entitled to practice before the direct taxes authorities, and that this privilege is given to them only by the specific provisions of various Acts relating to direct taxes, a slight departure from the general procedure would be justified in this matter. Besides compulsory registration referred to previously, we recommend that the procedure suggested in the succeeding paragraph should be adopted in this regard.

8.135. If any question of professional misconduct necessitating the removal from the register of a lawyer or chartered accountant arises, the Central Board of Revenue should first consider whether the complaint is such as requires disciplinary enquiry. After this preliminary examination, if the case relates to a chartered accountant, the matter should then be referred for enquiry to the Disciplinary Committee of the Council of the Institute of Chartered Accountants as provided for in the Chartered Accountants Act, 1949. If the alleged misconduct relates to a lawyer, the Department should take necessary action as provided under the Indian Bar Councils Act, 1926, according to which the High Court is first moved in the matter and if the complaint is not summarily rejected by it, enquiry is to be made by the Bar Council or a District Judge. *The report of the enquiry in either of these cases should be submitted to the President of the Income-tax Appellate Tribunal, who will pass orders after hearing the complainant, the respondent and the Council of the Institute of Chartered Accountants or the Bar Council as the case may be.* This procedure is suggested subject to our recommendation about the appointment of a High Court judge as the President of the Income-tax Appellate Tribunal being accepted. Any appeal from the decision of the President of the Income-tax Appellate Tribunal will go to the respective High Courts.

8.136. The rules of the Chartered Accountants Act provide for the constitution of a Disciplinary Committee for the purpose of inquiring into complaints of misconduct against the members enrolled as Chartered Accountants. We find that one of the members of the Disciplinary Committee has to be from amongst persons nominated by the Central Government to the Council of the Institute of Chartered Accountants. We are informed that initially the real intention in this regard was to include a nominee of the Central Board of Revenue on this Committee though a departure from this practice has been made later on. *We recommend that the Government nominee on the Disciplinary Committee should be a representative of the Central Board of Revenue.* Similarly, whenever such a case regarding the conduct of a lawyer before the direct taxes authorities is inquired into by the Bar Council, the Standing Counsel of the Department should be co-opted as a member of that Council for this purpose, if he is not already a member of the Bar Council concerned.

8.137. We regard it of considerable importance that tax experts should themselves have a clean record in regard to the disqualifications charge of their own tax liabilities. Failure in this respect should be construed as gross professional misconduct. If a tax expert is finally convicted for evasion of tax as a result of prosecution under the provisions of the direct taxes Acts, he should be straightaway disqualified from tax practice and his name removed from the register. It should not be necessary in such cases to follow the usual procedure for taking disciplinary action. Similarly, the conviction of a tax expert under the direct taxes Acts, on charges of abetting or aiding his clients in tax evasion, should result in automatic disqualification from tax practice. We also feel that any tax expert, who is penalised under the direct taxes Acts for concealment of income, wealth, estate, gift or expenditure should be disqualified from representation after the penalty proceedings have become final. However, in order to guard against any miscarriage of justice, the usual disciplinary procedure should be followed in such cases of penalty and disqualification should not be automatic. The latter procedure should also be followed in cases where the criminal proceedings do not result in conviction.

8.138. Another important point for consideration is the role played by tax experts in the correct determination of their clients' liabilities under the different direct taxes Acts. We feel that any instigation or aid given by tax experts to assesseees in resorting to tax evasion should be considered to be against the professional ethics. In this connection, it is pertinent to note that a study of the statement issued in August 1957 by the Council of the Institute of Chartered Accountants in England and Wales on the unlawful acts or defaults by clients of members of the Institute shows that the Chartered Accountants there are obliged by their code of professional conduct to advise their clients to make complete and correct disclosure of their affairs to the Inland Revenue Department, whenever they find that their clients have defrauded or are attempting to defraud the Government Exchequer. In case their advice is not accepted by any tax-payer, they withdraw from representing such a person in tax matters. Furthermore, they let the Department know that the particular tax-payer had committed a fraud though they do not reveal the exact nature of the evasion done. In no case do they attempt to shield their clients in cases of fraud. In the event of their failure to observe this code of conduct they are liable to be proceeded against on charges of conspiracy with, or, of aiding or abetting the tax-payer in committing the fraud against Inland Revenue. In the United States of America, communication between the Accountants and the clients are not treated as privileged and confidential for tax purposes and the Accountants can be required to produce them before the Revenue authorities. In this regard, we desire to observe in general that we do not see why the standards about the code of conduct and responsibilities that apply to Chartered Accountants and Lawyers in the United Kingdom should not apply to Chartered Accountants and Lawyers in India.

8.139. It is common knowledge that practice in tax matters presents a comparatively high remunerative field of activity. It has been observed that, at times, the fees charged by the tax experts in regard to assesseees in the small income group are as much as, and some times even more than, the tax leviable on their clients. The fees are, no doubt, in the first instance paid by the assesseees themselves but ultimately a portion of the same is borne by the Revenue. The fees for representation in the Income-tax assessment proceedings are allowed by the Department as admissible expenditure in computing the taxable income. We feel that with the introduction of our

scheme in regard to assessment of cases of small income group, the cost of representation to such assesseees will be considerably reduced. We have also suggested elsewhere that the Department should take steps to assist the small income group assesseees in filling their returns and in complying with the requirements of the taxing statutes. As we are suggesting in the Chapter on Public Relations, Chambers of Commerce, Trade Associations and Bar Councils may take necessary measures for providing free or cheap advice and assistance in tax matters. *We suggest that the Government, in consultation with the professional bodies, Chambers of Commerce, and Trade Associations, may take necessary steps in this regard.*

CHAPTER 9

PUBLIC RELATIONS

INTRODUCTORY

9.1. Efficient administration of a tax is not solely a question of collecting the tax due; it also implies that tax should be collected with the minimum of inconvenience to the public. Judged from this stand point, the Income-tax Department has come in for a good deal of criticism in recent years. Much of it may be unjustified and it is perhaps the result of the general hostility towards the taxes themselves. But in so far as this criticism indicates the extent to which the Department's relations with the taxpayers are strained, we feel concerned. Immediate action appears to us to be necessary not only to arrest any further deterioration in the relations with the assesseees but also secure a positive improvement in them. We have kept this objective prominently before us while making our recommendations about the changes in the administrative organisation and procedures. However, in view of the importance of the problem we consider it necessary to examine the 'public relations' aspect of the tax administration in a separate chapter.

9.2. We have already drawn attention to the general lack of trust and confidence between the taxpayers and the tax collectors. The Department cannot obviously function smoothly and efficiently in such an atmosphere. It is no doubt because of the absence of mutual confidence and trust between the assesseees and the officials of the Department, as well as the complexity of the tax laws, that a class of professional 'middlemen' has grown up. There is a feeling among the members of the public as well as the Department that many in this class are exploiting the situation to their own advantage. It is in the interest of the assesseees as well as the Department that such an exploitation should be effectively checkmated by establishing better relations between the Department and the taxpayer, based on mutual understanding, trust and confidence.

FACTORS INFLUENCING PUBLIC RELATIONS

9.3. The problem of 'public relations' is basically a psychological one, and it is a manifestation of the people's attitude towards taxes and of the manner in which tax laws are administered. Taxes are generally resented and most people react to them in a hostile manner. People are notoriously unwilling to part with their money and taxes are resented all the more because, in the mind of the individual citizen, the amount of taxes paid is not directly related to the amount of governmental benefits received. Besides, taxes being a compulsory levy, leave no option to him but to pay. No one can, in these circumstances, be expected to be enthusiastic about a tax he has to pay. Taxes are, however, a necessary cost of civilised living and are more so in the modern welfare State. People have, therefore, to necessarily acquiesce, even though passively, in the payment of taxes levied by the State and cooperate, atleast grudgingly if not cheerfully, with the tax administrators.

9.4. The attitude of the tax administrator towards the tax payers is also of great significance in securing even 'passive acquiescence and certain grudging cooperation' of the latter. Rigid honesty and strict impartiality in the administration of the tax laws, eagerness to collect only the tax rightly due under the law but no more, courtesy towards the tax payers and avoidance of irritation and inconvenience to the assesseees in the taxing process characterise a desirable attitude on the part of the tax officers. Treatment of taxpayers with utmost politeness, reasonableness and fairness creates immense goodwill and makes the administration of a tax much less irksome. It has been said rightly that the tax gatherer should approach the assesseees as a "bee gathering honey from flowers". *While the officers of the Department have necessarily to be firm in the discharge of their duties, and function without fear or favour, they must be sympathetic to the taxpayers, and show due consideration for their doubts and difficulties.* They must accord the same treatment to the assesseees as they themselves would like to receive if they were in the place of the assesseees. The personnel of the Department must be enthused with a spirit of public service which should be specifically impressed upon them at the time of their entering the service and also in the course of their training. We have already emphasised in the Chapter on Administration that the training programmes, particularly, those for the officers, should include, with greater emphasis, instruction in the technique of dealing with the public and maintaining good public relations. The various outward communications of the Department should be couched in as polite a language as possible, and, in the course of personal interviews also, the officers should be as courteous and helpful as circumstances permit.

9.5. Development of a desirable attitude on the part of the tax officers towards assesseees is, however, dependent, to a considerable degree, upon their morale, prestige and self-reliance. We have elsewhere referred to an unfortunate tendency to run down the tax officers on every pretext. Constant criticism and interference in their work demoralise the officers and make them lose their sense of proportion, self-confidence and initiative. A demoralised officer can hardly keep good public relations nor can he inspire confidence. Such criticism should, therefore, be avoided, as far as possible.

9.6. The general attitude of the officers of the Department should be one of willing helpfulness towards the assesseees. They should be equally zealous in protecting the tax payers as they are in protecting the revenue. *It must be the duty of every officer of the Department to bring to the assesseees' notice any allowance, rebate or relief that may be legitimately due to them.* They should also guide, advise and help the assesseees, particularly the small ones who form the bulk of the Indian tax payers, in the discharge of their obligations in relation to the tax matters.

9.7. We understand that the Central Board of Revenue has issued instructions, from time to time, to the above effect as would appear from the following extract from one of its circulars:—

"Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly, in the matter of claiming and securing the reliefs and in this regard the officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them

indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department".

There is however, a general complaint that such instructions are not always followed by the officers of the Department. Instructions are of use only if these are observed in practice. It is absolutely necessary, therefore, that the Central Board of Revenue should exercise a stricter control over the implementation of its instructions and should devise suitable machinery for this purpose. *In the course of inspection of an officer's work, it should be specifically examined whether the officer has failed to bring to the assessee's notice any relief due to them under the Acts. The higher authorities should view any such omission very seriously and take such punitive and remedial action as may be necessary in the circumstances of the case.*

9.8. We found that amongst the many factors which tended to strain the Department's relations with the public, the most important were those which related to faulty procedures and methods of work such as, too many hearings, arbitrary rejection of assessee's accounts, insufficient time for compliance with notices and other requirements, long waiting by the assessee and their representatives in the tax offices, delays in finalisation of assessments, appeals, refund claims and other proceedings, indifference in the grant of relief due to the assessee, treatment of every assessee with suspicion, etc. The remedy obviously lies in devising such procedures of work as would remove the several causes of friction. Various changes in the procedures and methods of work suggested by us in the earlier Chapters will, we believe, considerably help in improving the Department's relations with the assessee. The procedures of work should, however, be kept under constant scrutiny so as to discover points of 'frictional heat' and effect improvements.

9.9. Several witnesses pointed out to us that assessments made by assessing officers were, sometimes, far in excess of the correct tax liability of the assessee and that such over-assessments were, to a large extent, responsible for straining the Department's relations with the public. It was complained that over-assessments went un-noticed by higher authorities and that even when they were pointed out by the appellate authorities, no action ensued. Some witnesses even felt that over-assessments had earned promotions for some assessing officers. We view these complaints with great concern, particularly when they are being made despite the fact that it has been repeatedly emphasised at the highest level that the Department should not collect a pie more than what is due. To remedy the situation, we feel that, apart from effecting improvements in the existing procedures of work, a fundamental change in the attitude of the assessing officer is necessary. *They should be clearly told that in judging the worth of their assessment work, the criterion would be not the highly-pitched assessments which are ultimately reduced in appeals, but the making of realistic assessments which stand the test of appeal. We understand that there are already administrative instructions to this effect, but we feel that these need to be re-emphasised in order that the senior officers should bear them constantly in mind and discourage over-assessments as strongly as they view under-assessments.*

9.10. Some instances came to our notice in which the recovery proceedings were being pursued vigorously although tax payments had been

made by the assesseees. Similarly, in some cases information was called for again although it had been filed earlier. All these difficulties arise because of improper record-keeping and inadequate arrangements for getting and filing of receipts. *We recommend that effective steps should be taken in the matter and there should be a fool-proof system about getting and filing of necessary receipts for the various documents, papers, payments, etc.* In this connection we may also refer to another complaint that was made to us, namely, that confidential papers pertaining to assesseees were being sent in open envelopes, presumably through carelessness. We need hardly emphasise how necessary it is for the Department to ensure in the interests of good public relations and the secrecy provisions of the direct taxes Acts that the information relating to an assessee goes to him and does not, either inadvertently or through carelessness, pass to unauthorised persons. *We recommend that general instructions regarding care in despatch of papers should be issued and necessary checks should be laid down to ensure that these instructions are being followed.*

9.11. It was pointed out to us that the present system of fixing quotas for disposal of assessments and for collections caused harassment to the assesseees, because, in their anxiety to reach the targets of disposal and collection, the officers of the Department not only, at times, resorted to arbitrary and unjustifiably high assessments but also failed to show adequate accommodation to the assesseees in the matter of granting adjournments and in payment of taxes by instalments etc. We have carefully examined the system and do not find anything inherent therein as should by itself lead to harassment of assesseees. The targets of disposal and collection are intended to secure a control over the assessing officer's work and are, thus, important instruments of administrative control. The trouble arises only when the targets fixed are unrealistic and entail too much work load for the officers, or when they, at the cost of quality, think of contributing only quantity. Moreover, a rigidity about these matters is bound to create undue hardship to the assesseees. We feel that many officers and staff of the Department are, at present, over burdened with work which may be partly due to shortage of personnel and partly on account of faulty distribution of workload. An over burdened officer undoubtedly endangers public relations and the importance of a proper and fair distribution of work hardly needs any emphasis. *The targets for disposals and collections must be so fixed as do not, in any way, lead to over-assessments and harassment of the assesseees, and we have suggested, in the Chapter on Administration a rationalisation of these targets.*

9.12. A major and long standing grievance against the Department is that the assesseees and their representatives have to wait in the tax offices for unduly long hours. Such complaints continue to be made in spite of the Department's instructions requiring the officers to arrange their work in such a manner that the assesseees or their representatives need not wait in the office unnecessarily and to fix up cases for examination of accounts or for any other purpose leaving sufficient intervals in between. We were informed that some officers were still in the habit of fixing all cases for hearing at the same hour of the day. As all the cases cannot obviously be taken up for hearing at the same time, the practice results in waste of time of the assesseees who have to wait for long before their cases are taken up, and thus they are considerably inconvenienced. *We desire that the Central Board of Revenue should see that its instructions prohibiting the officers from fixing up all the cases at the same hour of the day, and requiring*

them to call the assesseees at suitable intervals distributed throughout the day are scrupulously followed. We also suggest that a list of the cases fixed for hearing at the different hours of the day, showing the names of the assesseees and the time fixed for them, should invariably be prominently displayed on the notice board outside the officer's room.

9.13. One of the reasons necessitating long waiting is the officers' failure to anticipate the time that would be taken up in the examination of a case, and this is mainly due to the lack of a pre-study of the case. Failure to study case papers before fixing up appointment or even before interview with the assessee naturally delays disposal of the case and prevents other cases from being taken up at the appointed time. We have already emphasised elsewhere the desirability and usefulness of studying the case papers before taking up appointments. Pre-study is, however, a matter of habit and mere issue of instructions to the officers is not likely to achieve much. The officers should be positively encouraged and persuaded to develop this habit. The Inspecting Assistant Commissioner may occasionally look into the assessing officers' cause list for the following day and discuss with them the cases fixed so as to find out whether they have already studied the case papers and also to indicate to them the broad lines on which they might proceed to deal with the cases.

9.14. The officers should bear in mind that time is money to the assesseees and that any time wasted is money lost to them. *They should, therefore, observe the office hours punctually and should see that the assesseees are not made to spend more than the minimum necessary time in the tax offices.* The senior officers should themselves set examples in this regard to be followed by their subordinates. In particular, the Commissioners and Assistant Commissioners should not send for the assessing officers when the latter are busy in hearing cases. Whenever an officer finds that he may not himself be able to take up a case at the appointed time on account of unanticipated circumstances, he must inform the assessee concerned or his representative, as early as possible, on telephone or otherwise, and fix up another appointment suiting his as well as the assessee's convenience. The senior officers should also pay surprise visits to the tax offices, and see that there is no complaint about long waiting. A complaint was made to us by an eminent professor that he had once to wait for long beyond the appointed time, and that when he was ultimately called in, the Income-tax officer had not even a word of regret to offer. A word of regret from the officer by way of common courtesy in such cases would go a long way in soothing the assessee's feelings.

9.15. Assesseees visit the tax offices not only when they are called but also on their own to make various enquiries and seek clarifications. It was complained that they had to wait for long before they were attended to. *We suggest that the officers should spare at least half an hour of their working period to attend to such visitors and the period for interviews should be prominently notified. Besides, all tax offices should have Enquiry Counters where the assesseees can make various routine enquiries without having to wait to see the officers.*

9.16. It was represented to us that considerable hardship was caused to the public in obtaining the various tax clearance and verification certificates, and that the Department also derived little benefit from them. It was, therefore, urged that it would help in improving the Department

Tax clearance and
verification
certificates

ment's relations with the public if the issue of these certificates was discontinued. We have already given our comments about this system in the Chapter on Evasion and Avoidance. In our opinion, these certificates serve a very useful purpose, in that these are an effective check against tax dodgers and tax defaulters and have enabled the Department to collect considerable amount of revenue. These must, therefore, necessarily continue.

9.17. The difficulties pointed out to us in regard to the issue of these certificates are all procedural, and these can be easily remedied through administrative measures. It is of utmost importance that these certificates are issued speedily without any undue delay. *We suggest that the staff dealing with the issue of these certificates should be strengthened, and, in particular, the number of Income-tax Officers, Foreign Section, entrusted with the issue of the certificates under Section 46A of the Income-tax Act should be enlarged so that there is at least one such officer at the headquarters of each State or the Commissioner of Income-tax.* The Income-tax officers and their office supervisors should keep a close watch over the disposal of all requests for the issue of these certificates. All requests not disposed of by the end of the day should be carefully scrutinised to see that these have been kept pending only for justifiable reasons.

9.18. One of the difficulties pointed out to us was that, at present, there was no prescribed form in which a person of Indian domicile, or a person who had already been assessed to income-tax, might apply to the "territorial" Income-tax Officer (i.e., the Income-tax officer within whose jurisdiction he ordinarily resides or is assessed to income-tax) for obtaining an Authorisation in Form A. In the absence of such a prescribed form, the applicants did not always know what information to give in the application and the Income-tax officers sometimes felt obliged to make enquiries on various points to ensure that all the requisite conditions had been satisfied. This resulted either in hardship to the applicants or delay in issuing the Authorisation. It was also stated that the procedure of first applying to the territorial Income-tax Officer and then to the Income-tax Officer, Foreign Section, was cumbersome. It was suggested that the applicant should be called upon to submit only one application to the territorial Income-tax officer who should himself issue the Tax Clearance Certificate without the applicant having to go to the Income-tax officer, Foreign Section.

9.19. We have carefully considered the matter and feel that the procedure for issuing the Tax Clearance/Exemption Certificates should be simplified to the extent possible so as to remove any unnecessary inconvenience to the applicants and to secure a more expeditious issue of the certificates. *We recommend that an applicant should be required to furnish, in duplicate, an application in the prescribed form to his assessing officer who should deliver one copy of the Authorisation to the applicant and send another copy of the Authorisation along with a copy of the application, duly endorsed, to the Income-tax Officer, Foreign Section, concerned. The applicant or his representative should then present the Authorisation to the Income-tax Officer, Foreign Section, for exchanging it with the Tax Clearance/Exemption Certificate.* In the case of persons of non-Indian domicile who have not been assessed by an Income-tax officer anywhere in India, the application should be submitted directly

to the Income-tax officer, Foreign Section, concerned. The proposal that the Tax Clearance Certificate should be issued by the assessing officer himself is not feasible because it will not be easy for the carriers to verify the genuineness of the certificates issued by hundreds of territorial income-tax officers all over the country. A Foreign Section Income-tax officer has been posted in all the towns which are ports of call in India, airports and certain other large towns and we have earlier recommended that the number of Income-tax officers, Foreign Section, should be suitably increased. We are satisfied that, with the changes suggested by us, there will be no hardship in obtaining the Tax Clearance/Exemption Certificates from the Income-tax officers, Foreign Section.

9.20. It was also complained that the forms necessary for obtaining these certificates were not freely obtainable to the assesseees. *We desire that all the necessary forms should be standardised and printed, and made freely available to the assesseees on request.* This will save the assesseees from a lot of unnecessary trouble and inconvenience.

9.21. Provision of adequate and proper amenities in tax offices for the visiting assesseees and their representatives is also necessary for the improvement of public relations. Complaints were made to us that the facilities available to the public in tax offices at present were woefully inadequate. The major difficulty is in respect of accommodation in the tax offices. Though visitors' rooms are provided in some office buildings, these are not at all sufficient. It is a common sight to find the assesseees either loitering about in the verandahs or squatting on the grounds of the tax offices. The position is particularly bad in the mofussil areas. One can easily understand how quickly the Department's relations with the assesseees get strained under such conditions. Absence of adequate office accommodation also seriously hampers the efficient functioning of any office. We have already emphasised, in the Chapter on Administration, the necessity and importance of providing adequate office accommodation, including that for the visitors.

9.22. Other complaints are in respect of lack of availability of adequate and proper furniture, absence of sanitary arrangements, insufficient arrangements for supply of drinking water and so on. These difficulties are particularly experienced in mofussil areas. *All complaints of inconveniences in the tax offices should be quickly and adequately remedied. The waiting rooms should be properly furnished. Adequate and good reading material and tax literature should be placed in the waiting rooms so that the public can usefully spend their time while sitting there. Adequate arrangements for the supply of cool drinking water to the visitors should be made in all tax offices. Wherever canteens, whether run by departmental personnel on cooperative basis or by others, exist, these should be allowed to supply tea, coffee and other light refreshment to the assesseees also. Wherever possible one or two public telephones should be provided for the convenience of the assesseees. There should also be proper sanitary arrangements for the visitors, and sufficient parking space for their vehicles.*

INFORMATION AND GUIDANCE TO THE ASSESSEES

9.23. The increasing complexities of tax laws and the importance of developing right outlook and attitude towards taxes necessitate educating the public as to their rights and liabilities in relation to the various tax

laws and the procedures. This need assumes greater importance in view of the fact that the bulk of the Indian taxpayers are not so well-to-do as to afford the costly advice from the tax experts.

9.24. The Department has, of late, been endeavouring to fulfil this need by means of printed tax literature such as lay-man's guides to the various tax laws, other explanatory notes regarding procedures of assessment, claims for refunds, filling up of returns etc. The efforts made by the Department are, no doubt, useful and commendable, but these do not seem to be quite adequate. Tax Administrations in other countries are increasingly paying far more attention towards educating the tax payers. *The Administration in India also should devote greater attention to organised departmental publicity and issue more tax literature in the form of pamphlets, booklets etc. dealing with the various branches of taxation. Detailed explanatory notes about the various forms of returns should also be made available to the public.* The various explanatory notes, pamphlets and booklets should be written in as simple, non-technical and easily intelligible language as practicable, and illustrated by practical examples, as far as possible. These should be prepared not only in English but also in Hindi and other regional languages. *We also suggest the publication of a 'Tax Journal' by the Department.* The Journal should contain articles dealing with various problems affecting the assesseees, important judicial decisions, notifications and circulars affecting the assesseees' interests, changes in the Acts etc. The Journal may also contain with benefit a section to answer queries of the assesseees on tax problems.

9.25. It is also necessary that widest possible publicity should be given regarding the tax literature issued by the Department and proper and adequate arrangements made for its distribution. We suggest that explanatory notes and unpriced tax literature should be supplied to all the assesseees along with the notices calling for returns, free of cost at least on the first occasion and thereafter on nominal charges. It may also be widely distributed through the chambers of commerce and other representative bodies. Issue of priced literature should be advertised in the newspapers and also through hand-outs or 'information notices' which may be sent to the chambers of commerce and other trade associations and which should also be exhibited in the visitors' rooms in the tax offices. There should also be a sort of 'show window' in each tax office displaying the tax literature—priced as well as unpriced—issued by the Department, and each office should have adequate stock of such literature so that it can be made available to the public on demand.

9.26. *We also suggest that the various notifications and circulars issued by the Central Board of Revenue having a bearing on the application of the taxation laws and affecting the assesseees' interests, directly or indirectly, should be made known to the public.* This can be done through 'press notes' and 'news releases' etc. and also by endorsing the copies to the various chambers of commerce and other representative bodies.

9.27. We understand from the Central Board of Revenue that a full length feature film on taxation is already under production. This is a step in the right direction. Motion pictures and other visual aids are amongst the most effective means of getting one's ideas across to the public. The radio provides facilities for spot announcements on

Tax Literature

Publicity through
other media

important matters of general interest, tax debates and discussions and for interviews of officials by commentators. *These media of communication with the public should, therefore, be regarded as essential in the programme of developing public relations.*

9.28. The publicity and educational programmes as suggested in the preceding paras are intended to help the general body of taxpayers in their understanding of the taxation problems and procedures. However, these cannot fully succeed in providing a ready answer to each and every problem of the individual taxpayer. Direct guidance and advice by the Department to the assesseees for the solution of their individual problems is, therefore, an obvious necessity. Though all the officers of the Department have generally been instructed to guide and assist the assesseees in the discharge of their tax obligations, this task has been specifically assigned to the public Relations Officers. We, however, feel that little use is being made of these facilities at present. Moreover, the assistance of the Public Relations Officers can be available to only a limited number of taxpayers. In places where there are no Public Relations Officers, and particularly in the mofussil areas, taxpayers have necessarily to depend on the local tax officers for necessary guidance and help. Whereas normally every official of the Department should eagerly and willingly advise the assesseees, whenever so requested, it is necessary, in our opinion, that the task of guiding assesseees should be specifically entrusted to a particular branch or person in each tax office. *We therefore, suggest that in places other than those where Public Relations Officers function, Enquiry Counters which, as recommended by us in an earlier para, would be set up in each and every office should be responsible for assisting the assesseees in filling up various return forms, explaining their difficulties and doubts, answering their various queries and guiding them in all possible ways.*

9.29. In addition to the assistance rendered to the assesseees by the Department as suggested in the preceding para organisation of free legal aid to the small assesseees, say those with incomes below Rs. 5,000 a year, by professional institutions like the Institute of Chartered Accountants and Bar Associations merits serious consideration. It should be the moral and social obligation of the professional experts who earn considerable income from tax practice, to spare some time and energy for providing free legal assistance to the not so-well to do assesseees. Such assistance will also go a long way in making the public tax conscious.

9.30. Much can be done by the chambers of commerce and other representative bodies in educating their constituents about tax matters, and in fact, we understand, some of the important chambers already provide such facilities to their members. *These facilities should be further enlarged. The Department should also seek the assistance of the chambers and other associations in educating the assesseees and may usefully establish some liaison arrangements with them for this purpose.*

9.31. Some witnesses also complained that the Department was reluctant to give its opinion or ruling on the various points, referred to by the assesseees, involving application of the provisions of the tax laws in relation to certain given facts. The assesseees have, as a result, to wait till the finalisation of assessments before they come to know of the Department's stand in respect of these matters. Such uncertainty is naturally disturbing and causes considerable hardship to the assesseees. Failure to

give a definite opinion or ruling when asked for also leads to lack of uniformity in the application of the law by the different officers of the Department and results in avoidable litigation. We, are, however, told that while seeking an opinion or a ruling from the Department the assessee does not generally give all the relevant facts having a bearing on the point at issue. Sometimes the so-called facts are entirely hypothetical. The Department cannot naturally risk giving an opinion under such circumstances. Moreover, the points referred to the Department for a ruling may already be sub-judice, and it may not, therefore, be proper for the Department to give decision on such points. We have given careful thought to this matter and we feel that it will considerably facilitate the administration of the tax laws and avoid undue inconvenience to the assessee if the Department gives its opinion on the points referred by the assessee, provided that all the facts relevant to the point at issue are made available to it. The Department must not, however, give a ruling on such points as are connected with any proceedings pending, for the time being, before any appellate authority, because this is likely to be construed as interference with the exercise of the discretion statutorily vested in the authority concerned. Opinions and rulings should be given, on full consideration of all the relevant facts and circumstances of the case, only by the Central Board of Revenue or the Commissioners, and not by any junior authority. These opinions and rulings should be binding on the Department so long as the facts and circumstances are the same, and there is no judicial pronouncement to the contrary.

REDRESS OF GRIEVANCES

9.32. There is a feeling amongst the taxpayers that their genuine grievances against tax officials are not being quickly and adequately redressed. Such a feeling which tends to persist, rightly or wrongly, shakes the taxpayers' trust and confidence in the Administration, and is a danger to good public relations. We, therefore, feel that whereas it is necessary and advisable to avoid any irritation and inconvenience to the assessee in the taxing process so as not to provide an assessee with an occasion for feeling aggrieved, it is of greater importance that whenever an assessee has felt aggrieved at the hands of any tax official, his genuine grievance should be immediately and adequately redressed.

9.33. The best and easiest way for securing this is to provide the taxpayers an easy and immediate approach to the senior officers. We suggest that all the gazetted officers of the Department, in particular the Inspecting Assistant Commissioners and the Commissioners, should keep their doors open for any member of the public to walk in and voice his grievances. These officers should, for the sake of convenience keep certain fixed hours everyday for the public to meet them. The Commissioners as well as the Inspecting Assistant Commissioners should also develop more contact both with the junior officers as also the public. They should visit all the offices in their charge at least once a year and, during their tour, they should spare sufficient time for meeting any taxpayer who may have a complaint to make or some special problem to discuss. We also suggest that complaints and suggestion boxes should be provided in all tax offices including those of the Assistant Commissioners, Commissioners and Appellate Tribunal benches. Complaints and suggestions received should be registered everyday by the clerks in charge of the Enquiry Counters or the Public Relations Officers, as the case may be, and prompt action taken thereon by the competent authority concerned. Periodical reports on the complaints and suggestions received and the action taken thereon should be submitted to the next higher authority.

PUBLIC RELATIONS OFFICERS

9.34 Following the recommendations of the Income-tax Investigation Commission, Complaint Sections had been opened in 1949 in the Commissioners' offices in Bombay and Calcutta, and later in Madras and Delhi, for the purpose of expeditiously dealing with all complaints regarding discourtesy, harassment etc. These Complaint Sections were later expanded into regular offices under the Public Relations Officers. These officers were firstly appointed from among retired Commissioners or Assistant Commissioners, but, on the recommendation of the Taxation Enquiry Commission to appoint "younger and more energetic type of serving officers"*, experienced Income-tax Officers are now appointed as Public Relations Officers. The functions and duties of the Public Relations Officers are to advise the assessee generally as to their rights and obligations, to guide and assist them in filling in their returns and in obtaining refunds, tax clearance certificate etc. quickly, to explain to them the procedures for assessment, refunds; etc. and for redressing, in consultation with the Commissioner, the legitimate grievances which the assessee bring to their notice.

9.35 We had sought views of the public as to the effectiveness of the Public Relations Officers in improving the Department's relations with the public. Opinion is, however, divided as to their usefulness and contribution towards the improvement of public relations. Whereas some believe that the Public Relations Officers have encouraged direct contact between the Department and the assessee and have been useful in establishing better relations with the taxpayers, there are others who feel that they have failed in their task or have at best achieved only limited success.

9.36 Much of the criticism against the Public Relations Officers seems to have been made for want of proper and correct appreciation of the task before them. A Public Relations Officer is only an intermediary, a sort of middleman, endeavouring to bring the taxpayer in direct contact with the tax officer, and helping the two in establishing and maintaining good relations with each other by explaining the difficulty of one to the other. Relations between taxpayers and the tax administrator are determined and influenced chiefly in the course of tax proceedings by the respective attitudes of the tax payer and the tax officer toward each other. Thus the tax officer is undoubtedly the fittest person to take care of the Administration's relations with the public, and to see that cordial and friendly relations are maintained with the taxpayers. In other words, every Officer of the Department is the best public relations officer in respect of his own dealings with the taxpayers and we have all along emphasised this fact. However, the Public Relations Officers are certainly very useful in supplementing and assisting the public relations activities of the Department as a whole. As has been pointed out by us in the earlier paras, 'public relations' do not mean mere avoidance of irritation and harassment to the taxpayers; these also involve publicity and educational programmes, positive guidance and assistance to the taxpayers, as well as timely and adequate redress of their grievances. It is mostly in respect of these latter aspects of 'public relations' that Public Relations Officers have an important part to play.

*Report of the Taxation Enquiry Commission, Vol. II, para 34 page 223.

9.37 The Public Relations Officers have so far achieved a limited success on account of several factors, such as:

- (a) They are functioning at only four places, and adequate publicity even about their existence and the assistance rendered by them to the public is not given with the result that most of the assesseees are ignorant of the facilities provided for them.
- (b) They have also been generally entrusted with several other duties with the result that they are not able to devote their full attention and time to 'public relations' work.
- (c) They are also handicapped in their work for want of adequate resources and authority. They are not adequately equipped with staff, tax literature and other publicity material. They also do not possess adequate authority for the redress of the assesseees' grievances brought to their notice.

9.38 The difficulties referred to above can be easily resolved by administrative measures, and the Public Relations Officers can prove very useful and helpful in promoting better relations between the Department and the public. *We, therefore, recommend extension of the system. There should be a whole-time Public Relations Officer in the charge of each Commissioner of Income-tax. The Public Relations Officers in important places like Bombay and Calcutta should be of the rank of Assistant Commissioners, and those in other places should be at least senior Class I Grade I Officers. They should be selected with very great care because the success of the institution would largely depend on the personal zeal of the officer concerned. He should be a person with enthusiasm and flair for this kind of work and should preferably be one who has been adequately trained in 'public relations' methods. A suitable scheme for training selected officers in 'public relations' methods and technique should be devised.*

9.39 The Public Relations Officers should be broadly charged with the responsibility of organising all 'public relations' activities in their respective charges. They should, in particular, carry on publicity and educational programmes through the distribution of tax literature prepared by the Department and other publicity media, guide and assist the taxpayers in all possible ways and redress the grievances brought to their notice quickly and adequately. In mofussil areas and other places where Public Relations Officers are not appointed, the 'public relations' work should be under the personal care and supervision of the Income-tax Officer in charge of the circle. The work may, however, be carried on through the Enquiry Counters manned by a selected member of the class III staff who should be given special training and a special pay.

9.40 In view of the importance of establishing the best possible relations with the taxpayers and in order to coordinate the activities of the Public Relations Officers and to generally organise 'public relations' activities of the Department on sound and effective lines *we are of opinion that one of the Members of the Central Board of Revenue should be in specific charge of 'public relations'.* He should be responsible for the preparation of tax literature and other publicity and educational material, and should generally guide and supervise the 'public relations' aspect of the Department's work through the Commissioners of Income-tax. He should, in particular, personally attend to the major grievances brought to his notice by the assesseees.

DIRECT TAXES ADVISORY COMMITTEES

9.41 One of the suggestions on which we sought the views of the public, through our Questionnaire, was the formation of Direct Taxes Advisory Committees at the Centre and in each State. There has been an overwhelming support for this proposal from the public including the various chambers of commerce and trade associations. Advisory Committees help to bring together the senior Departmental officials and the representatives of the public and thereby create a feeling of association between the Administration and the public. They enable the Administration to keep itself attuned to public opinion and to get the views of the responsible members of the public as to how the Administration is working from the citizen's point of view, what the difficulties experienced by the average taxpayer are and what improvements could be made. Such Committees also help the public to appreciate the Department's difficulties in the administration of the tax laws, and explain to them the rationale of the particular administrative methods and procedures followed by the Department. The Estimates Committee of the Parliament has also, in its 49th Report, emphasised the importance of "a consultative machinery at each important level of administration where representatives of the taxpayer might be provided a forum to point out the defects in the system of tax administration they might be experiencing and to suggest possible remedies therefor".*

9.42 Some witnesses were, however, of the opinion that the periodic consultations by the Department with the chambers of commerce and other representative bodies of the taxpayers serve to achieve the same objectives as are intended of the Advisory Committees. Consultations with the chambers of commerce are no doubt useful in their own way but their advantages are limited. They cannot completely replace the Advisory Committees. The discussion in the Advisory Committees is more objective and informal, and there is a greater appreciation of each other's difficulties. It was also pointed out by some witnesses that the problems arising in the administration of the direct taxes generally concern a taxpayer as an "individual" because they arise out of an obligation to discharge the burden of proof in the particular circumstances of his case. Advisory Committees would thus, it was said, not be able to consider these problems in view of the secrecy provisions of the direct taxes laws. Problems of tax administration are, however, not all individualistic; there are several administrative difficulties of a general nature which are common to a large body of the taxpayers. The Advisory Committees can perform a useful role in resolving such difficulties.

9.43 A number of consultative and advisory committees consisting of non-officials as well as officials have already been set up in several departments, including the sister revenue departments like the Customs, Central Excise and Sales tax Departments in certain States. These bodies are said to be proving a useful forum for the exchange of views between the Departments and the members of the public concerned. No major difficulties are also said to have been experienced in their functioning.

9.44 The problems of administration in the direct taxes department are practically of the same nature as those in the other revenue departments. Similar advisory bodies will, in our opinion, be of considerable benefit for the direct taxes administration. *We therefore, recommend that a Direct*

Taxes Central Advisory Committee should be set up for the Headquarters organisation under the Chairmanship of the Union Minister for Revenue and Civil Expenditure. In addition, similar Committees should be constituted separately for the various regional organisations under the Chairmanship of the Commissioner concerned. Where there are two or more Commissioners at the same place, like Bombay and Calcutta, there should be a common regional Committee for all such Commissioners' charges with the seniormost Commissioner as the Chairman of the Committee and the other Commissioners as co-opted Members. Further, where there is only one Commissioner for two or more States, separate Committees should be set up for each State.

9.45 With regard to the functions of these Committees, our suggestions are:—

- (a) They should advise the Administration on measures for developing and encouraging mutual understanding and cooperation between the taxpayers and the Department. They should, in particular, discuss administrative and procedural difficulties of general nature, such as office accommodation, amenities for visitors in tax offices, jurisdiction of officers, simplification of forms and procedures, arrangements regarding payment of taxes etc., and should make suitable suggestions for their removal. They might also discuss matters relating to trade practices.
- (b) Individual grievances should be strictly excluded from discussions, though it should be permissible to refer to individual instances while discussing a problem or principle of a general nature. The Departmental authorities should not be under any obligation to disclose the facts of such cases to the Committees.
- (c) The regional Committees should be concerned with the problems of regional interest only, while the Central Committee should discuss questions of all India importance, including those which arise out of the discussions in the regional Committees.
- (d) Matters relating to the taxation policy of the Government should not be discussed in these Committees, because such discussions will not be in the general public interest.
- (e) The Central Committee should be consulted on the draft rules, including those relating to rates of depreciation allowances, forms of returns etc., framed by the Central Government or the Central Board of Revenue relating to the administration of the tax laws. Even at present public is invited to give its views on such draft rules, and it will certainly be useful to discuss them as also the public views on them in the Central Committee before finalisation.
- (f) The Central Committee may also discuss such other matters relating to direct taxes as may be referred to it by the Central Board of Revenue.

9.46 While the Committees should fully represent the various important interests and viewpoints, it is also necessary, at the same time, that the number of Members in a Committee should not be very large so that its business is transacted smoothly and expeditiously. Keeping this in view, we suggest that the Committees should be constituted on the following

lines, the Members representing the various interests being nominated by the Central Government:

I. Central Committee :

(a) <i>Chairman</i>	Union Minister for Revenue and Civil Expenditure.	
(b) <i>Members</i>		
(i) Members of the Central Board of Revenue dealing with direct taxes		2
(ii) <i>Members of Parliament :</i>		
Lok Sabha		2
Rajya Sabha		1
(iii) <i>Professional tax experts.</i>		
Lawyers		1
Chartered Accountants		1
(iv) <i>General :</i>		
Representatives of Commerce, Industry and Professions		6
Others		1

II. Regional Committee :

(a) <i>Chairman</i>	Commissioner of Income-tax	
(b) <i>Members</i>		
(i) Member of Parliament elected from the State or region concerned		1
(ii) Representative of the Finance/Revenue Department of the State Government		1
(iii) <i>Professional tax experts :</i>		
Lawyers		1
Chartered Accountants		1
(iv) <i>General.</i>		
Representatives of Commerce, Industry and Professions		4

CENTRAL BOARD OF ENQUIRY

9.47 It was suggested to us that a Central Board of Enquiry should be set up for the purposes of enquiring into allegations of harassment, discourtesy, malpractices etc. and for awarding suitable punishment in cases where the allegations were substantially established. The suggestion seems to have been made because of a lack of trust and confidence in the administrative machinery. We see no reason why the Administration should not be keen enough to redress the legitimate grievances of the assessee, because the success of the Administration ultimately depends on its ability to enlist the assessee's cooperation, trust and goodwill. The Administration has to be equally zealous of establishing a name for fairness. It cannot also be overlooked, as had been pointed out by the Income-tax Investigation Commission, that most of the complaints are made maliciously with a view to overawing and demoralising the officers of the Department. The various suggestions made by us, such as easy accessibility of senior officers to the public, increase in the number of Public

Relations Officers and an improvement in their status and authority, constitution of Direct Taxes Advisory Committees, tightening up of the vigilance machinery of the Department and, in particular, the insertion of a provision on the lines of Sections 7(7), 13(3) and 50(1) of the Income-Tax Act of U.K., etc. would provide adequate safeguards to the assesseees against undue harassment. We have also suggested in an earlier paragraph that one of the Members of the Central Board of Revenue should be in specific charge of 'public relations' work of the Department. The Member would be the chief executive authority for discharging the functions intended of the central board of enquiry. *We are, therefore, not in favour of constituting a separate Central Board of Enquiry.*

Sd. Mahavir Tyagi, *Chairman.*

Sd. F. H. Vallibhoy
Secretary.

Sd. Rajendra Pratap Sinha
Sd. B. M. Gupte
*Sd. G. P. Kapadia
Sd. K. S. Sundara Rajan

} *Members.*

NEW DELHI,

Dated the 25th November, 1959.

*Signed subject to separate Memorandum of Dissent. Comments and Recommendations, submitted to the Chairman at the time of signing this Report today.

SUMMARY OF CONCLUSIONS

AND

RECOMMENDATIONS

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

CHAPTER 1

GENERAL

1. Until such time as the Department and the taxpaying public gain sufficient experience of the working of the existing statutes, the present position of administering the various taxes under the different Acts should continue. (Para. 1.4)

2. It is not worthwhile to introduce a system of assessment on the basis of one comprehensive return of the income, wealth, expenditure and gift. (Para. 1.5)

3. The designation of the assessing officers under all the direct taxes Acts should be changed to 'Direct Taxes Officers' and the designation of the other authorities to Appellate Assistant Commissioner, Direct Taxes, Inspecting Assistant Commissioner, Direct Taxes, Commissioner of Direct Taxes and Direct Taxes Appellate Tribunal. It is also necessary to change the designation of the Income-tax Department into the 'Direct Taxes Department'. (Para. 1.6)

4. Frequent changes in the statutes adversely affect the efficiency of the Department and should, therefore, be avoided. (Para. 1.8)

5. All substantial changes in the law should, as far as possible, be effected through specific amending Acts which would provide opportunities for detailed consideration by the Parliament, instead of through the Finance Bills as at present. (Para. 1.9)

6. Simplification of taxing statutes is not an easy task. However, if changes in the statutes are reduced to the barest minimum and the provisions are arranged more logically and expressed in clearer language much of the existing ambiguity would disappear. (Para. 1.10)

7. It is essential that appropriate measures are taken to enable the State to secure its due amount of taxes. For this purpose, the administration has to be so geared that the State is able to collect the taxes in full without causing any undue inconvenience to the assesseees. (Para. 1.14)

CHAPTER 2

ASSESSMENTS—I

(PROCEDURES)

Total quantum and arrears of assessments

8. The Department should endeavour to complete all assessments, as far as possible, in the assessment year itself and, save in exceptional cases, no assessment should remain pending for more than two years.

(Para. 2.8)

Measures for expediting disposal

9. Assesseees having income from business, profession or vocation should be statutorily required to file the returns of income within four months after the close of the accounting year or by 30th June following that year, whichever is later. For all other assesseees, the last date for filing of returns should be 30th June, regardless of their accounting year. In suitable cases, where the accounting period for business, profession or vocation ends after 31st December, the assessing officer should be empowered to grant on his own appropriate extensions of time for filing the return, up to a date not exceeding beyond a period of six months from the end of the accounting year. In any other case, extension should be granted by him only after obtaining the previous permission of the Commissioner and on conditions which might include the furnishing of adequate security for the tax that might become due. In all cases of extension, the levy of interest at six per cent per annum on the tax that would become payable on assessment, should be compulsory and statutorily laid down. Assesseees who do not file the returns by the prescribed or the extended date should be subjected to deterrent penalties which should vary according to the period of default. (Paras. 2.10 and 2.11)

10. The statutory provision, under Section 22(1) of the Income-tax Act, for the issue of a general public notice should be deleted. Instead, a simple advertisement should be issued in the beginning of each assessment year, reminding the public about their liability to file their returns within the prescribed dates. (Para. 2.12)

11. As a matter of convenience, the Department should send return forms to the existing assesseees by ordinary post under a general certificate of posting so as to reach them before the 30th April. However, if a person does not file the return within the time-limit or within the extended time, he should be considered to be in default unless he can show that he had applied for return form to the assessing officer in time and the same had not been supplied to him. (Paras. 2.13 and 2.15)

12. The responsibility for a preliminary scrutiny of returns should be specifically assigned to the Inspector or Head Clerk. Such a scrutiny should be restricted to pointing out technical defects which have a material bearing on the assessment. (Para. 2.16)

13. Though assessment proceedings may have to be adjourned on account of genuine difficulties of assessee, adjournments should not be given as a matter of course but only where they are justified.

(Para. 2.17)

14. The assessing officers should have full discretion to fix their programmes of assessment work. They should, however, have no objection to adjusting these programmes to suit the convenience of assessee's representatives, should the latter so request.

(Para. 2.18)

15. Assessing officers should give a minimum of eight days' time from the date of service of a notice for its compliance.

(Para. 2.19)

16. The need for planning of work and prior study of a case before fixing it for hearing is nowhere greater than in the Income-tax Department.

(Para. 2.21)

17. The use of standardised questionnaire in respect of important industries, trades and professions should be restricted to big cases only and be relevant to the facts of the case.

(Para. 2.22)

18. Each assessing officer should chalk out, in the beginning of the year, a plan of his work for the year. In doing so, he should take due care that revenue-yielding and arrear cases are taken up sufficiently early in the year, that all pending assessments in a case are taken up together and that the assessments under the various direct taxes Acts in a case are disposed of simultaneously.

(Para. 2.23)

19. Wherever sufficient numbers of cases of similar trades, businesses, etc., are available, functional circles should be organised to deal separately with the cases of each trade, business, etc.

(Para. 2.24)

Small income group scheme

20. The amount of time and labour devoted to cases of different categories should bear relation to their revenue potential. The time and energy being spent on small cases appears to be totally disproportionate to the revenue yields therefrom. The Department must get out of the present grooves and make a bold departure in respect of the assessment of small income cases. In such cases the income returned should be generally accepted after preliminary scrutiny and the assessment made under Section 23(1) of the Income-tax Act without calling the assessee to the tax office. Detailed examination of accounts and other scrutiny would be made only once in four years. This new approach will have a psychological effect and improve the relations between the Department and nearly five lakhs of assessee. The details of this scheme are outlined in paragraphs 2.27 to 2.32.

(Para. 2.26)

21. The proposal for having on-the-spot assessments is not favoured. However, in big cities like Bombay, Calcutta, Madras and Delhi, the assessing officers dealing with small income cases should have their offices in the various localities, if the number of cases justifies such local offices. In the mofussil areas, an assessee should be called to the nearest place which the assessing officer visits during the year, unless the assessee requests for a hearing at the headquarters of the officer.

(Para. 2.34)

Middle and large income group assessee

22. Cases of large income group assessee should be segregated, wherever possible, and entrusted to experienced and competent officers.

(Para. 2.35)

23. Where returns or accounts have been accepted in the past, they should not be subjected to detailed enquiry every year, unless the assessing officer comes in possession of definite information regarding concealment of income, etc., in such cases. (Para. 2.36)

24. The proposal for deleting the proviso to Section 13 of the Income-tax Act relating to estimated assessments is not favoured. However, to remove various difficulties experienced in the application of this proviso, the following steps should be taken:—

- (a) The Department should, after due study of the local conditions and practices, and in consultation with the various chambers and trade associations, consider the feasibility of prescribing the minimum accounts and the type of accounts which should be maintained in respect of each trade, business or vocation. If accounts are kept in the prescribed form or maintained in proper manner with sales and purchases supported by vouchers or otherwise proved, they should be accepted unless there are grave omissions or there is evidence of suppressed sales or undisclosed purchases;
- (b) In any case where it is proposed to reject the results shown by the account books, the assessee must be given an opportunity to explain his viewpoint. Before finalising the assessment, the assessing officer should also give to the assessee an indication of the rate of gross profits that is proposed to be adopted and the relevant particulars of comparable cases, ensuring that such information does not enable the assessee to identify the person to whom the particulars relate;
- (c) In cases where accounts are reliable in part, estimates should be restricted only to such other part as is not acceptable;
- (d) Gross profit rates registers in the prescribed form should be maintained, tradewise, in each tax Circle or Ward;
- (e) A list of the cases where the proviso to Section 13 of the Income-tax Act had been applied should be sent, every fortnight, by each assessing officer to the Inspecting Assistant Commissioner;
- (f) In their orders on appeals against the invoking of the proviso and the gross profit rates applied, the appellate authorities should fully and properly reason out the relief which they give. (Para. 2.41)

25. A provision should be made in the Income-tax Act requiring all assesseees to furnish statements of total wealth every fourth year along with their returns of income. (Para. 2.42)

26. Before finalising an assessment, the assessing officer should make a tentative computation of the total income, wealth, etc. Where the additions or disallowances proposed to be made are of small amounts only, he may discuss them orally with the assessee and/or his representative and record the result of the discussion on the order sheet. However, where substantial additions are proposed, he should allow an opportunity to the assessee, in writing, to give his point of view within a fortnight.

(Para. 2.43)

27. Audit of accounts in all non-company cases of business, profession or vocation, where the assessed total income in any of the last three years exceeds Rs. 50,000 should be made compulsory by law and the auditors should be required to give audit certificate in a prescribed form. Such an audit should also be compulsory in those cases of business, profession or vocation where the returned income, for the first time, exceeds Rs. 50,000. (Para. 2.50)

Improvements in methods of work

28. In cases where production of books of accounts is necessary and the assessments could be completed in one hearing, notices under Sections 23(2) and 22(4) of the Income-tax Act should be issued simultaneously and preferably in a combined form. (Para. 2.53)

29. It is not desirable to revive the cadre of Examiner of Accounts in the form in which it existed till 1945. However, the assessing officers should be permitted to utilise the assistance of the Inspectors in the matter of routine examination of accounts or detailed examination on specific issues. In addition, there should be a set of experienced Examiners, preferably Chartered Accountants, at important centres of various Commissioners' charges to assist the officers in examination of complicated cases. (Para. 2.55)

30. Suitable administrative instructions should be issued to the effect that in *bona fide* cases, expenses should be allowed after scrutiny on broad lines without going into meticulous details, and that interest, rebates and other trade discounts should be allowed in the years in which such adjustments are recorded in the books. (Para. 2.56)

31. It should be ensured, by executive action, that assessment order is passed by the assessing officer as early as possible, after the final hearing, but in no case later than thirty days. There should be a statutory provision in all the direct taxes Acts requiring the assessing officer to send a certified copy of the assessment order along with the notice of demand. (Para. 2.57)

32. In order to reduce complications in the calculations of tax, the following steps should be taken:—

- (a) the basic rates of income-tax should be incorporated in the statute itself;
- (b) to meet the budgetary requirements from time to time, variations should be made in the rates of sur-charges through the annual Finance Acts. Whenever necessary, however, the basic rates may also be increased or decreased;
- (c) without affecting any of the reliefs at present admissible, such of the sur-charges on income-tax as go to the divisible pool should be merged with the basic income-tax rates;
- (d) in the case of company taxation, instead of prescribing the rate of supertax at 50 per cent and then providing several rebates therefrom for various types of companies, the effective rate of supertax for each of these types should be specified in the Act itself;

- (e) in the case of registered firms having total income exceeding Rs. 40,000, the procedure for allowing rebates to the partners should be suitably amended so as to simplify the calculations of tax, without affecting the incidence or quantum of taxation;
- (f) ready-reckoners for calculations of taxes should be made available to the departmental officials immediately after the passing of the Finance Bill; and
- (g) all tax offices should be equipped with one or more calculating machines. (Para. 2.58)

33. Internal audit parties for conducting post-audit of tax calculations, etc., should be established on a permanent footing in all Commissioners' charges and they should be adequately staffed. They should be as zealous in pointing out mistakes which have resulted in excess recoveries of tax from assessees as they are in detecting cases of under payment. There should also be a more comprehensive and systematic pre-audit of tax calculations than is being done at present. (Paras. 2.60 and 2.61)

34. The assessing officers should maintain two separate order sheets—one for recording brief details of all the proceedings relating to an assessment and the other for noting matters of confidential nature like inter-departmental correspondence, etc. The former order sheet alone should be open to inspection by assessees and copies thereof should be made available to them, subject to the usual rules. (Para. 2.62)

35. Assessment proceedings should not be delayed in any case merely because there would be no further recovery of tax or a refund might result. (Para. 2.63)

36. Assessing officers should be administratively required to report to their higher authorities cases where assessments have not been completed within twelve months from the date of the filing of the returns, giving reasons therefor. (Para. 2.64)

37. Precautionary assessments should be made only in exceptional cases where there is a likelihood of irretrievable loss to revenue. (Para. 2.65)

38. The present return forms require simplification in certain respects. They should be so revised and rationalised that the columns which are mostly superfluous are deleted, that each assessee is required to give details only in respect of those matters which are relevant to his assessment and that such enquiries of a general nature which are almost invariably made at present, in the course of assessment proceedings, are incorporated in these forms. (Para. 2.66)

39. The power of the Central Government to grant relief under Section 60(2) of the Income-tax Act in accordance with the rules already laid down should statutorily vest in the Commissioners of Income-tax. (Para. 2.68)

CHAPTER 3

ASSESSMENTS—II

(SPECIAL PROBLEMS)

Foreign branches

40. The Department should take special steps to ensure that the statutory provisions and instructions of the Central Board of Revenue for keeping the tax demands relating to foreign income and assets in abeyance, until monies can be repatriated to India, are strictly followed by the assessing officers and no harassment is caused to the assesseees.

(Para. 3.2)

41. While the income from or the value of shares in Indian companies having assets in foreign countries, which have imposed restrictions on the repatriation of profits or capital to India, should continue to be included in the hands of the shareholders for assessment purposes, the amount of tax to be covered should be limited to the sum that would have been payable, had the income or assets in these countries not been included in the assessee's total world income or wealth. The balance of the demand should not be recovered until restrictions on their repatriation are removed.

(Para. 3.3)

42. The certificates of assessment issued by the foreign taxation authorities in regard to transactions in foreign countries should be invariably accepted as a sufficient proof, unless there are reasons to suspect the *bona fides* of such certificates. In such cases there should be no need for insisting on the production of account books or even audited balance sheets or statements of accounts.

(Para. 3.4)

Depreciation allowances

43. The existing method of allowing depreciation on the basis of 'written down value' for assets other than ocean-going ships, should continue.

(Para. 3.8)

44. The present method of allowing depreciation on the basis of the number of months of use of an asset in a year should be changed. Depreciation at full rates should be allowed in respect of an asset which has been used for the business for six months or more during the 'previous year'. For an asset which has been used for more than a month but less than six months, depreciation should be allowed at half of the prescribed rates. No depreciation should be admissible as regards an asset which has not been used for a total period of more than a month during the 'previous year'.

(Para. 3.9)

45. The present procedure for making changes in the categorisation of assets and rates of depreciation prescribed in Rule 8 of the Income-tax Rules is satisfactory and should continue. However, in future, before making any changes or amendments in this regard, the views of the

Direct Taxes Central Advisory Committee which is being proposed, should be obtained and duly considered by the Central Board of Revenue.

(Para. 3.10)

46. Provisions of Section 10(2) (vii) of the Income-tax Act should be applicable to 'furniture' also.

(Para. 3.12)

47. Where an asset is purchased and sold in the same year, no depreciation should be allowable, and the difference between its purchase value and the sales price should be treated as capital gain or loss, as the case may be.

(Para. 3.13)

48. Expenses of repairs to leased properties used for the purposes of business, profession or vocation, and normal depreciation on alterations or additions made by the lessee to such properties should, by executive instructions, be allowed in his assessment to the extent to which he would have been entitled to them, had he been the owner of the premises. This concession should be available only for the period of the lease. Any residual depreciation which cannot be given or remains unabsorbed, owing to the termination of the lease, should not be allowed or carried forward, either in the hands of the lessee or the lessor.

(Para. 3.15)

49. In order to avoid difficulties arising out of different methods of calculating depreciation in the cases of electricity undertakings for income-tax purposes and for the purposes of Electricity (Supply) Act, 1948, the latter Act should be suitably amended so as to provide for appropriate reserves of depreciation in earlier years.

(Para. 3.16)

Development rebate

50. The condition that for the allowance of development rebate, the asset should not be sold or otherwise transferred to any person other than the Government for a period of ten years needs to be relaxed. This period should be reduced to eight years. The restrictions should not apply to transfer or sale of assets to Government Companies, Statutory corporations and public utility companies, and those resulting from the absorption of one company, by amalgamation or otherwise, by another company.

(Para. 3.22)

51. If a firm which had been allowed development rebate in respect of certain assets converts itself into a private limited company within the period prescribed for allowance of such rebate, and the share capital of the partners of the erstwhile firm in the company remains either the same or is more and the amount of development rebate kept in reserve by the firm is transferred *en bloc* to the company which also keeps it under the same conditions as would have applied to the firm, had it continued, the rebate should not be forfeited.

(Para. 3.23)

52. There should be a general provision in the statute conferring on the Central Board of Revenue, residuary power of relaxation of the various conditions for entitlement of development rebate in exceptional cases.

(Para. 3.24)

53. In cases of companies which acquire new machinery entitled to development rebate but which incur overall losses within the statutory period of ten years, the rebate should not be withdrawn, if such a withdrawal results in the levy of tax.

(Para. 3.25)

54. The intention of the legislature with regard to the word 'installed' for the purposes of allowing development rebate should be clarified beyond all doubts by suitable amendment of the Income-tax Act. Development rebate should also be admissible in respect of mobile plant and machinery, such as earth removers, cranes, bulldozers, aero-engines, coal mining machinery, etc., as well as on trucks and tractors and other machinery which are used exclusively in connection with mining operations. (Para. 3.26)

• **Bad debts and irrecoverable loans**

55. Assessing officers should not disallow the claim of a bad debt on purely technical grounds. If the officer is satisfied about the genuineness of a bad debt, he must allow it either for the 'previous year' in respect of which it is claimed or for any of the earlier 'previous years' in which, according to the officer, the debt had actually become bad, provided that such earlier 'previous year' is not more than four years anterior to the 'previous year' in which the debt is claimed to have become bad and actually written off. The assessing officer's findings in this respect should be appealable. The appellate authorities should, in such appeals, give a definite finding as to the year within the four years' period to which the bad debt relates. The effect of the appellate order should be given by the assessing officer by rectification of the relevant assessment order under Section 35 of the Income-tax Act. These considerations should equally apply to claims of irrecoverable loans. (Para. 3.30)

56. If the assessing officer finds that the write off of a bad debt is premature, he must make a specific note to this effect in the assessment records and allow the bad debt in the relevant year irrespective of the fact that the debt has been written off in the earlier year. (Para. 3.31)

57. In the case of public banking companies, although statements giving all relevant particulars in regard to claims of bad debts and irrecoverable loans in respect of their assessments should continue to be supplied by them, the assessing officer should not exercise any meticulous check over them, nor call for additional information except in cases where he has reasons to doubt the genuineness or the correctness of their write off. (Para. 3.33)

Mutual associations

58. Government should enter into suitable long-term administrative arrangements with chambers of commerce, trade and professional associations, etc., so as to tax them on the entire surplus of receipts over outgoings without allocation between mutual and non-mutual activities. Annual subscriptions paid by members of these bodies should be deducted from their income and so also the surplus distributed to the members, such surplus being taxed in the hands of the recipients. The proposal for total exemption of chambers of commerce from tax is not approved. (Paras. 3.36 and 3.37)

Section 23A Companies

59. The existing provisions of Section 23-A of the Income-tax Act relating to statutory percentages of the net distributable profits which should be distributed as dividends by Section 23A companies should continue.

The administrative discretion for relaxing these percentages which was available upto 1957 in the form of sub-sections 3 and 4 of Section 23A should not be revived. (Para. 3.43)

60. The provisions of Section 23A(2) should be so amended as to provide that the company would get an opportunity to make a further distribution of its profits and gains to make up the statutory percentage, if—

(a) the distribution made by the company falls short of the statutory percentage by not more than fifteen per cent of its total income, as reduced by the amounts referred to in clauses (a), (b) and (c) of Section 23A(1); or

(b) the company had distributed not less than the statutory percentage of the total income as reduced by the amounts, according to the return made by it under Section 22(2), but in the assessment made by the assessing officer, a higher total income is arrived at and this difference is due to any reason other than deliberate concealment. (Para. 3.46)

61. The provisions of the old sub-section (6) of Section 23A of the Income-tax Act were equitable and easily administerable, and they should, therefore, be restored. (Para. 3.47)

62. Such of the foreign profits which could not be remitted and also the taxes thereon should both be excluded in the calculation of the distributable income for the purposes of Section 23A of the Income-tax Act. Simultaneously, it should be made clear in the statute that if and when such profits are repatriated, they would be included in the distributable income. (Para. 3.48)

63. The time-limit for passing an order under Section 23A of the Income-tax Act in cases of normal assessment should be limited to four years in the same way as for making assessments. Such a time-limit should not apply to cases of companies whose assessments are reopened or made under Section 34 of the Act. (Para. 3.49)

64. It should be made clear in the statute itself that the mere fact that the articles of association of a company give general discretion to its Directors to allow or disallow the transfer of its shares would not mean that the shares are not freely transferable so as to invite the application of Section 23A of the Income-tax Act. (Para. 3.50)

65. The Department should, under administrative instruction, give, on request, a clearance to the companies as to whether on the facts stated to them, the provisions of Section 23A would be applicable or not. (Para. 3.52)

Speculation losses

66. No change is considered necessary in the fundamentals of the provisions of Section 24(1) of the Income-tax Act relating to set off of loss sustained in speculative transactions. However, the following steps should be taken for removing some of the difficulties experienced in the application of the existing provisions:— (Para. 3.54)

(i) Explanation 2 to Section 24(1) of the Income-tax Act should be expanded so as to clearly specify the various types of hedging transactions which would not be regarded as speculative for

the purposes of this Section. Hedging transactions in connected commodities should not be treated as speculative transactions, provided the total of such hedging sales does not exceed the actual stocks and purchase transactions. (Para. 3.56)

(ii) *Bona fide* hedging transactions entered into by a dealer or investor in shares different from those held by him, upto the amount of his holdings in stocks and shares should not be treated as speculative. (Para. 3.57)

(iii) Suitable administrative instructions should be issued giving illustrations in order to make the intention of the Government clear as to what constitute speculative transactions and what are hedging transactions. (Para. 3.58)

(iv) Genuine hedging transactions with parties outside the country should be treated at par with the hedging transactions inside the country. (Para. 3.59)

(v) Suitable administrative instructions should be issued so as to make it clear that speculative loss, if any, carried forward from the earlier years or the speculation loss, if any, in a year should first be adjusted against speculation profits of the particular year before allowing any other loss to be adjusted against these profits. (Para. 3.60)

Registration of firms

67. Once a firm is registered, there should be no obligation on it to apply for renewal of registration every year, provided the firm files a declaration along with the return of income to the effect that there had been no change in its constitution. Unless a partner who has left a firm intimates the fact of his having done so to the assessing officer, he should continue to remain liable for the tax on his share of the profits. (Para. 3.62)

68. Assessing officers should point out technical errors, if any, in a partnership deed, or application for registration and offer the partners of the firm an opportunity to rectify such technical defects within a month. (Para. 3.63)

69. It should be provided in the Income-tax Act or the rules thereunder, that the firm or firms as constituted during the accounting year should be registered and the demand should be raised against the partners constituting the firm(s) during that year. It should further be provided that the successor firm and/or its partners would also be liable for the tax liability of the succeeded firm or its partners. (Para. 3.66)

Reopening of assessments

70. No change in the time-limits for taking action under Section 34 of the Income-tax Act is called for. However, before reopening an assessment under this Section, the assessing officer should intimate to the assessee the grounds on which the action is proposed to be taken, and give him ten days' time to send his reply. It is after proper consideration of the reply of the assessee that the decision to reopen the case should be taken. (Para. 3.71)

71. Section 34(3) of the Income-tax Act should be so amended as to give the Department at least one year's time from the date of filing of

a return under Section 22(3) of the Income-tax Act for completing that assessment. (Para. 3.73)

72. The proposal for incorporating in the direct taxes Acts provisions similar to those of Section 66 of the U.K. Income Tax Act, 1952 is not favoured. (Para. 3.75)

73. Neither the assessee nor the Department should be entitled to have assessments reopened on points of law already concluded merely because there is a later decision of the High Court or the Supreme Court to the contrary. (Para. 3.76)

Taxation of non-residents

74. The proposal for adopting in the Indian Income-tax Act the provisions of U. K. Income Tax Act in regard to taxation of non-residents is not favoured. Executive instructions issued by the Central Board of Revenue regarding the interpretation of the term 'business connection' and in respect of the provisions for the taxability of non-resident should be widely publicised both within and outside the country. (Para. 3.84)

75. Applications for the issue of certificates under the second proviso to Section 42(1) of the Income-tax Act regarding the extent of the tax liability of the agent of a non-resident should be promptly attended to by the assessing officers and disposed of within one month of their receipt. (Para. 3.85)

76. The Department should avoid proceeding simultaneously against the non-resident and his resident agent. (Para. 3.86)

Place of assessment

77. Where an assessee has more than one place of business, profession or vocation, the assessment should be done at the place which is the most important from the point of view of his business activities. (Para. 3.91)

78. It should be made clear that the place of assessment should be taken in relation to the assessment year and not the 'previous year'. (Para. 3.92)

79. Suitable administrative steps should be taken to put a stop to the illegal and incorrect practice of some of the officers to proceed with the assessments without referring the assessee's objections about jurisdiction to the Commissioner, although the objections had been raised by the assessee in time. (Para. 3.93)

80. The provisions of the Explanation to Section 5(7A) of the Income-tax Act should be made applicable to all cases where jurisdiction is transferred from one officer to another. (Para. 3.95)

81. The Central Board of Revenue should take suitable administrative measures to see that the assessing officer assessing at the head office, businesses having various branches obtains necessary information regarding the latter from the respective officers. (Para. 3.96)

Definition of income

82. There is no need for giving an all-embracing definition of the term 'income' in the statute. (Para. 3.97)

Definition of expenses

83. The following categories of expenditure should be considered as allowable deductions in computation of total income under the Income-tax Act:—

- (a) Interest paid or payable on monies borrowed by a partner for investing in the firm as his share of capital;
- (b) expenses incurred prior to the commencement of a business but in connection with the activities leading to such commencement;
- (c) expenses incurred for tax representation during assessment proceedings for settlement of liabilities under the Income-tax, Wealth-tax, Expenditure-tax and Gift-tax Acts. (Para. 3.98)

Right shares

84. While computing the profits made on the sale of right or bonus shares, a reduction should be allowed for the fall in the value of the original shares. (Para. 3.99)

Problems relating to other Direct Taxes Acts

85. A Central Valuation Department for the purposes of valuing different types of assets would be advantageous to both the Department and the assessee. However, to begin with, a Valuation Cell may be created in the Central Board of Revenue for valuing shares of limited Companies. With gain in experience, the Cell may extend its valuation activities to other categories of assets and may ultimately mature into a full-fledged Central Valuation Department. (Para. 3.107)

86. Arbitration by valuers should continue to be available only at the appellate stage before the Tribunal. However, in cases where the valuation of more than one type or category of assets is in dispute, it should be permissible for the assessee as also the Department to name a valuer for all types of assets instead of naming separate valuers for each of the type or category of assets. (Para. 3.108)

87. The valuers appointed for arbitration should give their award within six months, as under the Arbitration Act, unless further time upto three months is allowed. (Para. 3.109)

88. Value of an immovable property adopted for one assessment under the Wealth-tax Act and accepted by the assessee should not normally be disturbed for five years. (Para. 3.110)

89. The only qualification for approving Chartered Accountants for appointment as valuers should be ten years' practice in the profession. No change is suggested in regard to the qualifications prescribed at present for appointment of valuers in jewellery. (Para. 3.112)

90. The following procedure should be adopted for valuation of shares:—

Where quotations are available in the stock exchange, the latest quotation anterior to the valuation date should be adopted. In other cases of public limited companies where shares are not quoted in the stock exchanges, the value of their shares may be taken at the price at which transfers of a *bona fide* character

have been made before the valuation date. In the case of shares of private limited companies, the break-up value should not be the only criterion for determining the value of the shares, but all other relevant conditions and factors should also be taken into consideration. (Para. 3.113)

91. For the purposes of Wealth-tax assessments, the formula of taking the value of a building at twenty times the municipal annual rental valuation less permissible expenses should not be applied too rigidly and due regard should be had for other relevant factors, including the age and condition of the building. (Para. 3.114)

92. In no case should a life interest in trust property be computed at a figure exceeding the value of the entire trust property itself. Nor should there be double assessment of the same assets, once in the hands of the trust and again in the hands of a beneficiary having a life interest therein. (Para. 3.115)

93. The Central Board of Revenue should formulate rules for valuation of annuities. (Para. 3.116)

94. The basis for valuation of assets left in Pakistan should not be the face value for which the claims have been admitted by the Rehabilitation Authorities of the Government of India, but the realisable value of such claims. (Para. 3.117)

95. It should be provided in Section 2(m)(iii) of the Wealth-tax Act that in cases, where the tax is disputed in appeal and is, therefore, not paid, the disputed liability would be adjusted by rectification as and when the appeal is decided. (Para. 3.118)

96. The Central Board of Revenue should issue instructions prescribing a broad basis for a rational allocation of liabilities in relation to assets chargeable to Wealth-tax and those exempted from this tax. (Para. 3.119)

97. When a certain amount of expenditure is admitted by an assessee, the Expenditure-tax Officer should not make any roving enquiries about that. The instructions already issued by the Central Board of Revenue on this point should be further emphasised (Para. 3.120)

98. There should be a statutory time-limit of four years from the date of filing of the return for the completion of an Estate Duty assessment. Where assessments are made *ex parte*, the time-limit should be four years from the date the return was due. (Para. 3.122)

99. In mofussil circles the same officer who assesses the assessee for the other direct taxes should also deal with the estate duty cases. In cities, the present circles for dealing exclusively with estate duty cases should continue. (Para. 3.123)

100. Where an accountable person discharges the debts or other liabilities of the deceased and the Department is satisfied that such discharge is *bona-fide*, such debts should be allowed to be deducted from the value of the life interest in the trust or other property. (Para. 3.124)

101. The present requirement of the verification in the Estate Duty Return to be made before a magistrate should be removed. Verification for estate duty purposes should have to be made in the same way as for income-tax purposes. (Para. 3.125)

CHAPTER 4

APPEALS AND REVISIONS

Appellate Assistant Commissioners

102. The Appellate Assistant Commissioners should be transferred from the control of the Central Board of Revenue to that of the Ministry of Law. (Para. 4.9)

103. Appeals from Central Circles, Special Circles, Company Circles as well as other cases involving large sums in dispute should be grouped together in ten or twelve Special Appellate Ranges in important centres and these should be manned by experienced Appellate Assistant Commissioners. (Para. 4.10)

104. There is scope for improvement in the methods and procedures of work of the Appellate Assistant Commissioners which can be helpful in expediting disposals and in redressing the grievances of the appellants. (Para. 4.11)

Appellate Commissioners

105. Two Appellate Commissioners who would be of the same status and rank as Commissioners but functioning under the administrative control of the Ministry of Law should be appointed for exercising administrative control over the Appellate Assistant Commissioners, and carrying out annual administrative inspections with a view to ensuring quicker disposal of work and the maintenance of uniform standards in their approach to problems. In addition, they will also hear appeals on assessments made by Inspecting Assistant Commissioners as well as function as Appellate Controllers of Estate Duty when the Estate Duty (Amendment) Act comes into force. (Para. 4.12)

Appellate Tribunal

106. The Appellate Tribunal is a necessary and suitable appellate organisation and should continue. (Para. 4.14)

107. The President of the Appellate Tribunal should be a serving High Court Judge, deputed to act as such by the President of India for a fixed tenure. (Para. 4.15)

108. As far as possible, officers of the Department of the status of Commissioners of income-tax or Assistant Commissioners senior enough to become Commissioners, should be selected for appointment as accountant members. Serving District and Session Judges should, as far as possible, be selected for the posts of judicial members. (Para. 4.17)

109. As far as possible, the Appellate Tribunal should give reasoned and detailed orders giving full facts and findings so that a clear picture of the issues involved, the arguments advanced and the conclusions arrived at would emerge. (Para. 4.18)

110. The Appellate Tribunal being the final fact finding authority, it should not be granted enhancement powers under the Income-tax Act. Enhancement powers now vested in it under the other direct taxes Acts should be withdrawn. (Para. 4.19)

111. The Department or the assessee may be permitted to file a memorandum of cross objections against so much of the order of the Appellate Assistant Commissioner as was against the Department or the assessee in instances where one of them might have gone in appeal. (Para. 4.20)

Panel of Advisers

112. Introduction of non-official element at the appellate stage by constituting a panel of advisers is not favoured. (Para. 4.24)

Rights of appeal

113. Rights of appeal should be provided against the order passed under the following sections of the Income-tax Act and the corresponding sections of the other direct taxes Acts wherever applicable:—

- (i) Section 18(7) under which the person responsible for deducting tax at source and paying it to the credit of the Central Government could be treated as an assessee in default,
- (ii) Sections 18A(6), 18A(7) and 18A(8) authorising levy of interest and Sections 18A(9) and 18A(10) authorising levy of penalty in instances of late payment or non-payment of the correct amount of advance tax,
- (iii) Section 23(6) governing the determination of the income of a firm and its division amongst the partners,
- (iv) Section 23A(1) authorising inclusion of deemed dividends in the total income of a shareholder,
- (v) Sections 25(3) and 25(4) governing grant of exemption from tax in cases of succession and discontinuance of business,
- (vi) Rule 6B under which registration, granted to a firm under Section 26A, could be cancelled,
- (vii) Section 35 authorising rectification of mistakes in the orders passed,
- (viii) Section 43 under which a person can be treated as agent of a non-resident.

and

- (ix) Section 144 under which liability could be fixed on partners of firms and members of associations in instances of dissolution or discontinuance of business.

In addition, appeal should also be statutorily provided against orders of the Appellate Assistant Commissioner under the different direct taxes Acts where he refuses to extend time for filing an appeal or dismisses an appeal as not filed in time. (Para. 4.26)

114. Modification in the existing stages of appeal is not favoured.

(Para. 4.28)

115. No restrictions should be placed on the existing rights of appeal under the Income-tax Act on the basis of the monetary limit of the income or tax involved. Introduction of such a system under the other direct taxes Acts is also not favoured. (Para. 4.30)

116. There should be no restriction on the rights of appeal in instances where an assessee fails to submit returns or comply with notices.

(Para. 4.31)

117. The difficulties caused to the Department on account of assessee's filing writ petitions do not call for a change in the Constitution. However, it should be ensured through appropriate Rules of the High Courts that the Courts give precedence in the matter of hearing of all applications concerning assessment and collection of the direct taxes, issue of notices of hearing to the Department at the stage of admission of writ petitions, and insist, in suitable cases, on the petitioners furnishing adequate securities to cover taxes in dispute before granting stay orders. (Para. 4.36)

Disposal of appeals

118. The placing of a statutory time-limit within which the appeals should be disposed of is not favoured. (Para. 4.37)

119. The measures adopted by the Central Board of Revenue with regard to disposal by Appellate Assistant Commissioners have proved effective but the matter must be kept under constant review. If found necessary, the number of Appellate Assistant Commissioners should be increased. (Para. 4.39)

120. The present strength of the Appellate Tribunal is inadequate and the number of benches should be increased immediately. (Para. 4.40)

121. The Chief Justices of the various High Courts should be requested to examine the position and take suitable measures such as the constituting of Special Benches for dealing with reference applications under direct taxes and giving priority to them so that the disposal of such cases is expedited. (Para. 4.41)

122. The Chief Justice of the Supreme Court should be approached with a request for constituting a special direct taxes Benches to deal with appeals under the direct taxes Acts. (Para. 4.42)

Uniformity in interpretation

123. The present procedure of issuing copies of the instructions of the Central Board of Revenue to the Appellate Assistant Commissioners should continue. However, these will not be binding on them. On a question of law involved in an appeal before the Appellate Tribunal, if varying judgments had been given by different High Courts, the President of the Tribunal may, on a request made to him, refer the question directly to the Supreme Court for a decision. (Para. 4.45)

Adducing of evidence

124. The present system under which admission of fresh evidence before the Appellate Assistant Commissioner is left to his discretion should continue. No modifications are necessary at present with regard to adducing of evidence before the Appellate Tribunal. (Para. 4.48)

Collection of taxes in dispute

125. The present provision for the stay of disputed demands at the discretion of the assessing officer should continue but the assessee should be provided with a right to approach the Inspecting Assistant Commissioner, the Commissioner and the Central Board of Revenue in instances where his request is not acceded to. (Para. 4.52)

126. Provisions analogous to what is contained in Section 66(7) of the Income-tax Act and the corresponding sections of the other direct taxes

Acts should not be introduced to cover instances of appeals before other authorities. (Para. 4.55)

Costs in tax appeals

127. The practice of awarding costs prevalent in Civil Courts cannot be easily adopted for appeal proceedings under the direct taxes Acts as far as appeals before the Appellate Assistant Commissioners and Appellate Tribunal are concerned. (Para. 4.56)

128. The existing procedure of granting expenses incurred in connection with proceedings before the assessing authorities itself constitutes an extra statutory concession and, there is no justification for a further extension of the concession to cover costs incurred in appeal. (Para. 4.57)

Representation of the Department before Appellate Authorities

129. There is a need for improvement in the matter of representing the Department before the various appellate authorities. The Senior Departmental Representative before the Tribunal should invariably be a person of the status of an Assistant Commissioner. (Para. 4.58)

Revisionary powers of Commissioners

130. In view of the discretionary power of the Commissioner to condone delays, no change is called for with regard to the time limit under Section 33A of the Income-tax Act and the corresponding sections of the other direct taxes Acts. The Commissioners should condone delays freely, especially in cases of over-assessments. (Para. 4.59)

131. While in instances where the assessee does not require a hearing the revision fee may continue to be Rs. 25 as at present, in instances where the assessee desires a hearing by the Commissioner, he should pay a fee of Rs. 75. The Commissioner should not, however, be precluded from granting a hearing to the assessee in cases of the former category if, for any reason, he considers it necessary. (Para. 4.60)

132. It is necessary not only to ensure that the pending petitions are disposed of immediately but also that the tendency towards an increase in their number is arrested. (Para. 4.61)

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CHAPTER 5

COLLECTION AND RECOVERY

Problem of arrears

133. The total amount of taxes in arrears, appears to be substantial. However, when the sums held in abeyance for settlement of relief claims and others which should be written off are taken into consideration, the effective arrears are much less. (Para. 5.10)

Causes of arrears

134. Broadly, it can be stated that both belated assessments as well as over assessments are responsible for a major portion of the existing arrears. (Para. 5.15)

Writing off and scaling down of demands

135. By a suitable modification of the Delegation of Financial Power Rules, the powers of write off of Commissioners should be limited to irrecoverable demands not exceeding two lakhs of rupees in an individual case and write off of amounts exceeding two lakhs in a case should be effected by a Committee consisting of the Chairman and two members of the Central Board of Revenue. (Para. 5.17)

136. A system of scaling down of demands should be adopted, subject to the monetary limit and other conditions mentioned with regard to write off of irrecoverable demands. The details of write off and scaling down of demands above a certain limit and the attendant circumstances should be presented to the Parliament through the annual administration reports of the Department. (Para. 5.20)

Procedural measures for improving collection

137. An improvement in collection is possible within the existing legal frame work by proper planning of assessment work, securing agreement on payment of taxes in cases involving substantial demands at the stage of assessment itself, issuing and serving notices of demand without delay, disposing of appeals involving large sums expeditiously, disposing of applications under Section 27 of the Income-tax Act and passing of orders of rectification etc. expeditiously, improving the manner of issue of recovery certificates to the Collectors, relieving assessing officers of their routine administrative duties, issuing distress warrants on a larger scale and establishing better relationship between Central and State officials. (Para. 5.22)

Deduction of tax at source

138. In instances where contracts are granted by the Central or State Governments, local authorities or statutory corporations, the paying authorities should insist on tax clearance certificates for granting the contracts and should, in addition, retain $2\frac{1}{2}$ per cent of the total value of the contract from the final or earlier instalments of payment, till the assessee produced a tax clearance certificate. There is no scope for extending the principle of deduction to tax at source either to cover further items under the Income-tax Act or to cover items under the other direct taxes Acts. (Para. 5.27)

139. Rule 11A of the Income-tax Rules should be modified in such a way that in deserving cases, while the payment of tax deducted should be made every month, the employers may be allowed to submit even quarterly or half-yearly statements. (Para. 5.28)

Advance payment of tax

140. The system of payment of tax in advance has been found useful and should be continued. (Para. 5.31)

141. An assessee should be liable for interest and penalty only if his estimate of advance tax turns out to be less than 75 per cent of the tax eventually assessed, after making adjustments for items of income on which tax is deductible at source and also the variations in the rates of tax made by the subsequent Finance Acts. (Para. 5.32)

142. The power vested with the Income-tax Officer to revise demands under Section 18A of the Income-tax Act on the basis of the latest assessed income should be utilised even in cases where such a procedure might be beneficial to the assessee. The position should be made clear in the statute itself and the term appearing as 'may' in the third proviso to Section 18A(1) should be changed to 'shall'. (Para. 5.33)

143. The liability arising under Section 42 of the Income-tax Act is on the non-resident and there is no case for exempting income under this Section assessed through an agent from the provisions of Section 18A. (Para. 5.34)

144. The present basis of calculation of tax at the rates of the current financial year for issue of a notice under Section 18A should be modified and the Income-tax Officer should merely repeat the demand relating to the assessed income of the latest year. (Para. 5.37)

145. The Department should continue to issue the notice under Section 18A in the case of assessee who are already on its records. (Para. 5.38)

146. The date for the payment of the last instalment of advance tax should be advanced by 15 days. Correspondingly, the dates for the payment of the other instalments should also be similarly advanced. (Para. 5.39)

147. Extension of the system of payment of tax in advance to the Wealth-tax and Expenditure-tax Acts is not necessary for the present. (Para. 5.40)

Provisional and self assessments

148. The introduction of a system of self-assessment either as an addition or as an alternative to the existing procedure of provisional assessments under the Income-tax Act is not favoured. (Para. 5.43)

149. Assessments under Section 23B of the Income-tax Act should generally be confined to cases where the income returned is above Rs. 20,000. Income shown in Section D of Part I of the Income-tax Return and claimed to be not taxable should not be included in the provisional assessments. (Para. 5.43)

150. The Wealth-tax and Expenditure-tax Acts should be amended to provide both for a system of provisional assessment on the lines of Section 23B of the Income-tax Act, and a system of self-assessment under which assessee would pay tax along with the returns as per their wealth or expenditure declared in them. (Para. 5.44)

Facilities for payment of taxes

151. In all cases a month's time from the date of service of notice should be given for payment of taxes. (Para. 5.45)

152. Arrangements should be made in the tax offices for making payments of tax and cash counters should be opened for this purpose in all the important places. The possibility of opening Government accounts or accounts of the Reserve Bank with scheduled banks into which taxes could be paid should be explored. Cheques drawn on all scheduled banks should be accepted towards payment of tax. The Reserve Bank and the State Bank should be approached for opening branches in Income-tax Offices. The assessee in the small income group should be given facility of remitting the due amount of tax by money orders and for this, a special type of money order form as now exists in certain States for payment of land revenue should be introduced. (Para. 5.46)

Rebates and discounts

153. Introduction of a system of rebates and discounts as obtaining under the Gift-tax Act, in the other direct taxes Acts is not favoured. (Para. 5.47)

154. Section 18(3) of the Gift-tax Act should be so modified as to provide that the amount of tax to be paid under sub-section (1) of Section 18 of the Gift-tax Act should be the tax that would have been payable under the Schedule had all gifts made during the previous year, including the gifts under consideration, been assessed to gift-tax at the rates given in the Schedule. (Para. 5.48)

Interest and penalty in case of default

155. Without prejudice to Section 46(1) of the Income-tax Act and to corresponding sections of the other direct taxes Acts, the Acts should be amended to allow for automatic accrual of interest at six per cent where taxes are not paid on the due dates. (Para. 5.52)

Lien in favour of revenue

156. Revenue should not be granted an unrestricted lien, without any time limit, over the assets of an assessee. (Para. 5.55)

157. The law should be amended to secure that where the Commissioner is satisfied at any time that an assessee is trying to alienate his assets to defraud the State of its revenue, he may direct the Income-tax Officer to immediately assess the total income of the assessee from the expiry of the last previous year to any such date as well as for the years not assessed, on the lines of Section 24A(1) of the Income-tax Act. (Para. 5.56)

Recovery from companies and shareholders

158. Section 530 of the Companies Act should be modified to the extent of allowing preferential payments of one year's assessment if assessed for a period prior to the winding up notwithstanding that the assessment was made subsequent to the winding up. (Para. 5.60)

159. The statute should be amended to secure that the priority for the recovery of tax in the case of companies in which the public are not

substantially interested within the meaning of Section 23A of the Income-tax Act obtains without any time-limit. (Para. 5.61)

160. The Companies Act should be amended to cast obligations on the liquidator of the company to give intimation regarding liquidation proceedings on the lines of Section 148 of the Internal Revenue Code, 1952 of U.S.A. If necessary, the taxing statutes should also be suitably amended. (Paras. 5.63 and 5.64)

161. Statutory provisions should be made requiring the Registrar of Companies not to strike off a company from the register of companies without obtaining the tax clearance certificate from the Income-tax Officer (Para. 5.65)

162. In the case of companies in which the public are not substantially interested within the meaning of Section 23A of the Income-tax Act, the liability for the direct taxes should first fall on the assets of the company, then on the directors of the company and lastly on the shareholders in proportion to their holdings. (Para. 5.69)

163. It should be statutorily provided that if the existing shareholders or directors do not come forward to purchase the shares of private limited companies belonging to defaulting directors or shareholders on the basis of the fair value determined according to the provisions of the Wealth-tax Act, the Department shall have the right to sell the shares by auction and the purchasers shall be registered as shareholders of the company, notwithstanding any provisions to the contrary contained in the Memorandum and Articles of Association of the company. (Para. 5.70)

Recovery from firms and partners

164. Suitable amendments in the Income-tax Act should be made to secure that all the assets of the firm are liable to be proceeded against for realising tax due from the defaulting partner of a registered firm in so far as the demand relates to his share of income from the firm

(Para. 5.72)

Recovery from transferred assets

165. Where it is not possible to recover taxes from the assessee in respect of the income aggregated under Sections 16(1)(c) and 16(3) of the Income-tax Act, the Department should have the right to proceed against the legal owner of the assets in respect of the share of tax payable on account of the inclusion of the proportionate income from such assets. However, in a case where the assessment has resulted from a finding of fact that the transfer was a mere benami transaction effected with an intent to evade tax, no such restrictions are necessary. (Para. 5.77)

Section 46(5A) of the Income-tax Act

166. Section 46(5A) of the Income-tax Act should be amended to allow the Department powers to attach joint accounts also.

(Para. 5.79)

167. Granting powers to Income-tax Officers under Section 46(5A) of the Income-tax Act to enquire into and decide questions of title etc. is not favoured. However, the law should be modified to provide that even where a garnishee on whom the notice is served disputes or denies the liability the account is frozen. The Income-tax Officer should be empowered to file a suit in the civil court to establish the liability of the garnishee. (Para. 5.80)

Publicising names of defaulters

168. Publicising names of defaulters as a means for effecting speedy collections is not favoured. (Para. 5.82)

Functional division between assessment and collection

169. No functional division resulting in the assessing officers being divested entirely of the responsibility for collection, is called for. However, they should be relieved of the unnecessary routine work so as to enable them to devote more time to recovery work. (Para. 5.86)

Central Revenue Recovery Code

170. A self-contained Central Revenue Recovery Code, complete in all respects, should be enacted for the purposes of effecting recoveries of direct taxes levied by the Central Government. (Para. 5.93)

171. The recovery of direct taxes levied by the Central Government under the Central Revenue Recovery Code should be effected by the Department of the Central Government itself. (Para. 5.99)

CHAPTER 6

REFUNDS

Direct refund claims

172. The special procedure for the disposal of the refund applications on the very day of their receipt, as obtaining at present at some places like Ahmedabad and Calcutta, should be extended to all the refund circles. (Para. 6.3)

173. The Department should give sufficiently wide publicity to the system of exemption certificates. The refund circles, in particular, should advise the refundees to obtain exemption certificates in fit cases. The exemption certificates should be issued freely and they should be valid for a period of three years. (Para. 6.6)

174. The Department should pay to the assessee interest at six per cent per annum on the amount of refunds due in respect of direct refund claims payment of which is delayed beyond six months from the date of the refund application, unless the applicant is himself mainly responsible for the delay. Interest at a similar rate should be payable in cases where the payment of the refund resulting from appellate or revisionary orders etc. is delayed beyond one month from the date of the receipt of the order concerned by the assessing officer. In cases where settlement of the refund claim is being held up due to non-cooperation from the claimant, a written intimation should be sent to him warning that the settlement of his claim for refund is being held up on account of his non-compliance with the Department's requirements (which may be specified therein) and that no interest will be payable to him for the consequent delay in the issue of refund. (Paras. 6.9 and 6.12)

175. As quick disposal of refund claims is an important means for establishing good relations with the taxpayers, greater importance than at present should be given for disposal of refund applications. (Para. 6.11)

Refunds and dividend taxation

176. The new scheme of taxation of companies and their shareholders as laid down in the Finance Act 1959, is sufficiently simple and easily workable. In order to avoid any difficulty to the shareholders, the Department should issue the exemption certificates freely and should give as many attested copies of the certificates as required by them. (Paras. 6.16 and 6.17)

177. In cases where grossing up of the dividends not covered by the new scheme of company taxation is necessary, settlement of the refund claims involving dividend income should not be kept pending for want of the relevant correct 'grossing factor' and that the claims should be disposed of provisionally on the basis of either the latest 'grossing factor' previously adopted for the company concerned, or the 'grossing factor' that may be ascertained from the company's certificate, whichever is more appropriate in the circumstances of each case. (Para. 6.18)

Other refunds

178. In cases where assesseees have paid advance tax under Section 18A of the Income-tax Act in excess of the amount due on the returns filed by them, if the assessment is not finalised within three months of the filing of the return of income, provisional refund of the excess payment should be given to the assessee concerned in the same way as provisional assessment is made under Section 23B of the Income-tax Act for collecting the tax payable, or, alternatively, the Department should pay interest at six per cent on the amount refundable from the date of the filing of the return to the date of the issue of the refund order.

(Para. 6.20)

179. There should be no objection in allowing the assesseees to seek adjustment of the refunds due to them on account of excess advance payments against other tax demands in cases where the Income-tax officers have failed either to finalise the assessments within three months or give provisional refunds.

(Para. 6.21)

Double taxation relief

180. In cases where the claim for double taxation relief cannot be filed within four years from the expiry of the relevant assessment year on account of non-completion of the assessment whether in India or in the foreign country within such time, the claim may be allowed to be made within one year from the date of assessment either in India or in the foreign country, whichever is later. In cases where the claims are filed beyond the permissible time-limits and are thus technically time-barred, the Commissioners of Income-tax should, in deserving cases, condone the delay or extend the time for filing the claims where circumstances warrant such condonation or extension.

(Para. 6.23)

181. In order to avoid the necessity for claiming refunds of double taxation relief and the hardships attendant thereto, the Government should conclude bilateral agreements for avoidance of double taxation with as many countries as possible.

(Para. 6.28)

182. The Government should take special steps to ensure that the "two-man" committee constituted to arbitrate in cases of disagreement between India and Pakistan regarding the allocation of the income chargeable to tax in either country, meets regularly and decides cases of disagreement.

(Para. 6.29)

183. A provision should be made to statutorily extend the time-limit of one year for production of the certificate of foreign assessment in order that the abatement in tax admissible to the assesseees under the agreements for avoidance of double taxation is not forfeited. Alternatively, the Government should make some other suitable provision to safeguard the interest and rights of the assesseees.

(Para. 6.30)

Payment of refunds

184. Strict instructions should be given to the officers to issue Refund Orders immediately after the refund claim has been settled and to write them out correctly so that there is no difficulty in their encashment.

(Paras. 6.31 and 6.32)

185. The currency of the Refund Orders should be the same as for treasury cheques, i.e., three months instead of one month, which obtains at present.

(Para. 6.33)

186. When a refundee makes a request for the payment of the refund to him in cash, it should be paid to him either in cash at the cash counter or remitted to him by postal money order, provided that the amount of refund does not exceed Rs. 250. (Para. 6.34)

187. When there is no dispute amongst the legal heirs, the refund due to the estate of a deceased should be paid to his son/widow or other legal heirs on their furnishing an indemnity bond and without requiring the production of succession certificates or letters of administration etc. (Para. 6.35)

CHAPTER 7

EVASION AND AVOIDANCE

Introductory

188. Tax Evasion and Tax Avoidance are neither new nor peculiar to India. They constitute a problem which is prevalent in almost all countries. (Para. 7.2)

189. Whatever be the method an assessee adopts—whether it be avoidance or evasion—the consequence of his action is the same, viz., loss of revenue to the State and an increase *pro tanto* in the burden of tax on the other taxpayers who do not resort to such practices. (Para 7.3)

190. The quantum of tax-evasion, though undoubtedly high, is not of the magnitude indicated by Prof. Kaldor in his report. (Para. 7.5)

Causes of evasion

191. While it cannot be denied that the higher the rate of tax, the greater will be the temptation for evasion and avoidance, the tax rates by themselves are not to blame for the large extent of evasion in the country. (Para. 7.8)

192. The complicated provisions of the direct taxes Acts, not all of which are easily intelligible, are responsible, to some extent, for tax avoidance and evasion. (Para. 7.9)

193. The inadequacy of the powers vested in the personnel of the Department is yet another cause for tax evasion. (Para. 7.10)

194. It is necessary to have in the Department sufficient numbers of trained and experienced personnel to cope with the current as well as arrear load of assessment and investigation work. Simultaneously, the organisation and procedures of the Department should be so improved as to bring it to the highest pitch of efficiency. (Para. 7.11)

195. Unless it is brought home to the potential tax evader that attempts at concealment will not only pay but also actually land him in jail, there could be no effective check against tax evasion. Non-resort to prosecution and non-levy of deterrent penalties have undoubtedly encouraged the growth of evasion. (Para. 7.12)

196. The pressure of public opinion is a major deterrent against any offence and, if the secrecy provisions of the direct taxes Acts are relaxed even to a limited extent, they will go a long way towards checking tax evasion. (Para. 7.13)

197. Suppression of the sales in the case of retail trades in an attempt to evade sales tax also results in evasion of Income-tax. (Para. 7.14)

198. A reformed moral outlook of the citizens and development of a better civic conscience would go a long way in eliminating tax evasion. (Para. 7.15)

199. Mutual distrust between the assessing officers and the taxpayers also encourages, to some extent, tax evasion. The Administration has to take the initiative and trust the assessee and conduct itself with a high sense of justice and fairplay. (Para. 7.16)

200. Not only should the departmental officials be honest but they must also be above suspicion and they should so conduct themselves in their private as well as official life that no wrong motives could be attributed to any of their actions. (Para. 7.17)

Methods of enquiry and investigation

201. More importance should be given to external survey work, by re-organising the Survey Circles and augmenting the staff in them. In larger cities like Bombay, Calcutta, Madras and Delhi, an Inspecting Assistant Commissioner should be placed exclusively in charge of survey work. (Para. 7.19)

202. It should be the responsibility of the Inspecting Assistant Commissioners of the various ranges to see, during the course of inspection, that the information collected during survey is properly utilised by the assessing officers. Particular attention should be paid in survey to the collection of information regarding construction of house properties and the rental incomes therefrom. (Para. 7.21)

203. Inspecting Officers as well as the Commissioners should see, by periodical test-checks, that the work of internal survey is not neglected and does not fall in arrears. (Para. 7.22)

204. The Special Investigation Branches should be re-organised and placed under the charge of Assistant Commissioners in Bombay and Calcutta and under senior Income-tax officers in other charges. (Para. 7.23)

205. Rules may be framed casting an obligation on the Government departments and quasi-Government bodies for communicating information about the payments made to contractors etc., to the Collation Branch of the Income-tax Department. (Para. 7.25)

206. The Collation Branch should be placed under the control of the Director of Investigation and Intelligence, with a Deputy Director of Inspection in-charge. (Para. 7.25)

207. It should be the responsibility of the Inspecting Assistant Commissioners to see that the information received by the assessing officers from the Collation Branch is utilised properly. (Para. 7.25)

208. More Special Circles may be created, as and when necessary. (Para. 7.26)

209. In order to make for better guidance on the spot, greater utilisation of local knowledge and more expeditious disposal of work, control over the Special Circles even in regard to the technical work of making investigations and assessment should be transferred to the territorial Commissioners of Income-tax. (Para. 7.26)

210. The Central charges have proved quite effective in handling cases of tax evasion and they should continue. The arrear cases in these charges are, however, very large, and as large amounts of revenue are involved, greater emphasis should be laid on bringing the assess-

ments uptodate. As soon as the investigations for the relevant period are completed and the assessments brought uptodate, such cases should be re-transferred to the territorial charges and fresh cases requiring investigation taken over by the Central charges. (Para. 7.27)

211. The Directorate of Inspection (Investigation) should be re-organised into a Directorate of Investigation and Intelligence. It should function in a more positive way by itself gathering all useful information and directing the investigational activities of the Department. (Para. 7.29)

212. The Directorate should organise, and be responsible for the collection, collation and dissemination of all such information as will be useful in determining the correct tax liability of the assessees. (Para. 7.30)

213. The Directorate should not only co-ordinate the investigations carried on in the different Commissioners' charges, but it should also render expert technical assistance in the investigations of specially complicated cases. (Para. 7.31)

214. The Directorate as well as certain Commissioner's offices should be equipped with modern mechanical aids like the photostat machines, infra-red photographic equipment and the ultra-violet equipment. (Para. 7.31)

215. Establishment of a Board of Specialist consisting of non-officials would not be of much help in checking tax evasion. However, officers with proved efficiency and experience in assessments of particular trades and industry should be appointed as specialists in the Directorate of Investigation and Intelligence. For the present, six specialists may be appointed, one each for the following industries and connected trades:—

- (i) Cotton textiles.
 - (ii) Other textiles including rayon, and paper.
 - (iii) Sugar and connected industries.
 - (iv) Iron and Steel and Engineering Industries.
 - (v) Cement manufacture and building contractors
 - (vi) Mining and Quarrying. Petroleum and allied products.
- (Para. 7.32)

216. Once the Income-tax Investigation cases are disposed of, there will be no need for a special body like the Directorate of Inspection (Special Investigation).

(Para. 7.33)

217. The constitution of a separate body like the Income-tax Investigation Commission for dealing with cases of large scale evasion is neither feasible nor necessary in the present circumstances. (Para. 7.34)

218. The system of group Assistant Commissioner's charges, apart from having other advantages, helps in checking evasion. (Para. 7.35)

219. Total wealth statements as recommended in the Chapter on Assessments—Procedures (Recommendation No. 25), would be one of the most effective methods of checking tax evasion. (Para. 7.36)

220. Compulsory audit of accounts in cases of income above Rs. 50,000 from business, profession or vocation (also suggested in the Chapter on Assessments—Procedure—Recommendation No. 27) will help the assessing

officers in the detection of concealments and manipulation of accounts. (Para. 7.37)

Powers

221. The suggestion that all traders should be statutorily required to keep closed and adjusted accounts on mercantile basis is not capable of implementation at this stage. (Para. 7.40)

222. Any scheme requiring the assesseees to write their accounts in books previously signed and stamped by the officials of the Department will not work satisfactorily and is likely to do more harm than good. (Para. 7.41)

223. In order to avoid any inconvenience to the assesseees, the checking of the current accounts should be done in the business premises of the assesseees, after obtaining the permission of the Commissioner. (Para. 7.42)

224. The statutory provisions regarding search and seizure are, on the whole, adequate and no major change is called for. Timely action is, however, of utmost importance. (Para. 7.43)

225. The feasibility of requiring the banks and other credit institutions to give names and addresses of their constituents, the sum total of whose deposits or withdrawals exceeds rupees one lakh a year, should be examined by Government, in consultation with the Reserve Bank of India. (Para. 7.45)

226. The Life Insurance Corporation should be statutorily required to furnish the name and address of every person taking life insurance policies for sums aggregating to Rs. 50,000 or more, whether in his own name or jointly with another. The general insurance companies should also be statutorily required to furnish brief particulars of general insurance policies of the value of Rs. five lakhs and above, whether taken under one cover or more than one cover by the same person. (Para. 7.46)

227. The suggestion that it should be statutorily provided that payments of money above a specified limit should invariably be made by crossed cheques is not practicable and is therefore, not favoured. (Para. 7.47)

228. It is necessary that the activities of the various revenue Departments in checking evasion of taxes should be properly co-ordinated, and that, for this purpose, there should be a regular and systematic exchange of the useful information available with the various Departments. The existing liaison arrangements between the various Departments should be improved and placed on a more systematic footing. (Para. 7.48)

229. The suggestion that the production of a tax clearance certificate from the assessing officers should be insisted upon by the registration authorities before registering the transfer of properties whose value exceeds a certain limit, is not favoured as such a restriction does not appear to be necessary. (Para. 7.50)

230. The system of automatic reporting as suggested by Prof. Kaldor in his report would throw an undue volume of work and is unworkable under the conditions existing in India today. (Para. 7.51)

231. In order to discourage tax evaders from entering into *benami* transactions for the purpose of achieving their object, statements made by any party to such a transaction before the direct taxes authorities with regard to the ownership of an asset should be made available, to the other party concerned in the case, if he applies for a copy of it. The secrecy provisions of the direct taxes Acts should be modified to secure this. (Para. 7.53)

232. By means of blank transfers dishonest assesseees are able to conceal their income from the Department and even if the concealments are detected and assessed, they can avoid the payment of the taxes as the shares are not registered in their names, and they cannot, therefore, be attached and sold. The only effective remedy against blank transfers is to provide that all transfer deeds executed by the transferor should be registered by the Stock Exchange and simultaneously date stamped. It should be secured by statute that the transfer deeds should have a currency of only six months from the date of stamping and that multiple transfers will be permitted only within that period of six months. (Para. 7.54)

233. The restrictions in the preceding recommendation should not be applied in cases:—

- (a) where the shares are handed over to a banking company either as a security or for safe custody, or
- (b) where the shares are held on blank transfers by the directors of a company or partners of a registered firm or trustees in a fiduciary capacity.

The banks, however, should be required to communicate to the tax authorities, through an annual statement, brief particulars of the shares held by them under blank transfers. (Para. 7.55)

234. While the present practice of rewarding the informers should continue, a statutory provision should be made for the punishment of informers who give wrong information. The Department should also be provided with the power to grant immunity from penal proceedings or prosecutions to those who having abetted an offence in this respect, come forward to give evidence against an assessee. No action should be taken on anonymous or pseudonymous petitions unless they contain some specific information. (Para. 7.57)

235. The present system of requiring contractors, applicants for import and export licences, etc., submitting a tax clearance certificate from the assessing officers, and the conditions attached to their issue, are effective in checking tax evasion and defaults in the payment of taxes. Tax clearance certificate should not be refused to those who have evaded or defaulted once but have thereafter kept a clean record with the tax authorities for atleast three years continuously. (Para. 7.58)

Penalties and prosecutions

236. A detailed schedule of penalties should be drawn up and incorporated in the statute book in place of Section 28 of the Income-tax Act and corresponding sections of the other direct taxes Acts. The schedule should make a distinction between cases of deliberate concealment or gross or wilful neglect and others which are not due to fraud, gross or wilful neglect, the levels of penalty for the latter category being much lower than those for the former. The maximum penalty leviable for

concealment or deliberate furnishing of inaccurate particulars should continue to be 150 per cent of the tax sought to be evaded as at present.
(Para. 7.60)

237. The penalty provisions of the direct taxes Acts should be brought in line with Section 49(1) of the Income-tax Act, 1952 of the United Kingdom so that the onus of proving that the omission to disclose income, wealth, etc., did not proceed from any fraud or wilful neglect, is placed on the assessee himself.
(Para. 7.61)

238. The prior approval of the Inspecting Assistant Commissioners for the levy of penalty should be obligatory only in cases of more serious offences, where the quantum of penalties leviable are heavier. Further the Inspecting Assistant Commissioners should be statutorily required to give a hearing to the assessee before according his approval to the levy of penalty in such cases. The law should be amended requiring the completion of the penalty proceedings within one year of the passing of the relevant assessment order or of the appellate order of the Appellate Assistant Commissioner or the Appellate Tribunal or of the revision order of the Commissioner, as the case may be.
(Para. 7.63)

239. Failure to institute prosecutions even in clear cases of tax evasion cannot be justified. In all cases of deliberate concealment, where there is sufficient evidence, the Department should, as a rule, resort to criminal prosecution.
(Para. 7.65)

240. Government should consider whether Sections 177, 191, 192, 199 and perhaps 181 of the Indian Penal Code should also be specifically referred to in the direct taxes Acts. Resort should be had more frequently to the provisions of the Indian Penal Code than to those of the taxing statutes and there should be a specific provision in the direct taxes Acts permitting the Department to take action also under the Indian Penal Code. Deliberate concealment of income, wealth, etc., should be made a specific offence punishable under Section 52 of the Income-tax Act and corresponding provisions of the other direct taxes Acts. There should be a foot-note in the return form itself to the effect that false or incorrect declaration would attract the penalty provided under Sections 28 and 52 of the Income-tax Act or the corresponding provisions of the other direct taxes Acts, as the case may be, and Sections 177 and 199 of the Indian Penal Code. The relevant sections should also be reproduced *in toto* in the return form.
(Para. 7.66)

241. Enhancing the maximum period of imprisonment will not in itself serve any useful purpose at the present moment when, practically, no prosecutions have been launched for the past several years. It is also not necessary at the present stage to provide for a minimum period of imprisonment, but if in actual practice hereafter the Department finds that the courts are averse to awarding imprisonment, the question of amending the existing law so as to provide for a minimum period of imprisonment in cases of conviction may be examined.
(Para. 7.68)

242. There should be an Enforcement Branch in each Commissioner's charge with the specific responsibility for examining cases suitable for prosecution and for initiating and pursuing prosecution proceedings. Prosecutions in cases of offences referred to in Section 51 of the Income-tax Act and the corresponding provisions of the other direct taxes Acts should be launched with the prior approval of the Commissioner. Prosecutions for offences mentioned in Section 52 of the Income-tax Act and the corresponding provisions of the other direct taxes Acts or any of the

provisions of the Indian Penal Code should be launched with the prior approval of the Central Board of Revenue, in order that there may be an uniform policy in this matter. (Para. 7.69)

243. While the existing powers to compound offences for which prosecutions are launched may continue, such powers should be exercised only in exceptional cases and not as a matter of course. In particular, there should be no attempt at compounding an offence merely because the composition fee offered is substantial. Compounding in any case should be done only with the approval of the authority sanctioning the prosecution. (Para. 7.69)

244. Provisions of Section 28(4) of the Income-tax Act and the corresponding provisions of the other direct taxes Acts which bar prosecutions in respect of the same facts on which a penalty has been imposed, should be deleted. (Para. 7.70)

245. Abetment of evasion of tax should be made punishable under the tax laws. A provision similar to the one contained in the Income-tax (Amendment) Bill, 1951 should be introduced in all the direct taxes Acts. (Para. 7.72)

246. The Income-tax return form, in cases of income above Rs. 20,000 and the return forms prescribed under the other direct taxes Acts should provide for a declaration and certificate in a prescribed form to be given by the representative who prepares or assists the assessee in the preparation of the return. (Para. 7.74)

Voluntary disclosures

247. The introduction of a voluntary disclosure scheme on the lines of the 1951 Scheme is not justifiable under the circumstances prevailing at present. (Para. 7.79)

248. Powers of settlement available, at present to a limited extent, under the Income-tax Act, for specific types of cases, should be enlarged and the Central Board of Revenue authorised to arrive at settlements with the assessee at any stage of the proceedings under the direct taxes Acts. Administratively, it may be ensured that the disclosure cases are settled by the Commissioner of Income-tax, where the tax involved is Rs. two lakhs or less, and where the tax is over Rs. two lakhs, the case should be settled by a committee consisting of the Chairman and two Members of the Central Board of Revenue. (Para. 7.80)

Suggestions to amend the law

249. The existing law should be amended on the following lines in order to plug the various loopholes:—

(1) Remittances of foreign profits which are at present exempt under Section 4(1) (b) (iii) of the Income-tax Act, should be made taxable. [Paras. 7.81(1)]

(2) The existing provisions relating to exemption of the income of charitable trusts under Section 4(3) (i) should be amended as follows:—

(a) The accounts of all charitable institutions, with the exception of those audited under the requirement of any other law or regulation, having an income of Rs. 5,000 or over, must be compulsorily audited and a certificate from the

auditor in a form to be prescribed should be furnished to the assessing officer in support of its claim for exemption from tax.

- (b) A charitable trust carrying on a business which is not in the course of carrying out the primary object of the trust itself should not be entitled to the exemption under Section 4(3) (i) of the Income-tax Act and this should be made clear in the substantive part of the Section itself.
- (c) Where a trust deed contains a clause that the funds of the trust should also be utilised for the relations and family members of the donor or that in carrying out the charitable objects of the trust priority should be given to such relations or members, exemption should not be available under Section 5(1) (i) of the Wealth-tax Act.
- (d) If any charitable trust had invested, at any time during the previous year, in the shares or capital of an industrial or commercial undertaking, in which the donor was himself substantially interested, an amount more than five per cent of the paid up capital of that undertaking, then the dividends or share income from such investments should not be eligible for exemption and should be taxed in the hands of the trustees.
- (e) As regards the other incomes of the trust, they will be exempt if the conditions under Section 4(3) (i) of the Income-tax Act are fulfilled, but if more than 25 per cent of such income of a trust is set apart for being spent subsequently for charitable purposes, the amount set apart in excess of 25 per cent should be taxed in the year in which it is so set apart. The Central Board of Revenue should, however, be empowered to increase this percentage in fit cases.
- (f) If on enquiries into the use to which the properties belonging to a charitable trust were being put to, the assessing officer found that they were being utilised (i) by the donor or his nominees or any of his family members, or, (ii) by a trustee or his nominee or his family, the properties should not be allowed exemption admissible under Section 5(1) (i) of the Wealth-tax Act, unless in the case of (ii) above the occupation of the property by the trustee was necessary for carrying out the objects of the trust. The assessing officer should also ensure that gift-tax is recovered in respect of the properties enjoyed by such persons. [Para. 7.81(2)]
- (3) Section 10(1) of the Income-tax Act should be amended so as to be consistent with the second proviso to Section 10(2) (vii), providing that even where the assessee had discontinued his business, profession or vocation, profits resulting from the sale of machinery or other assets would be treated as income and subjected to tax. The business expenses incurred after the closing of the business should also be allowed. [Para. 7.81(3)]
- (4) There is no justification for continuing the tax exemption to co-operative societies which are running transport services or controlling large commercial and industrial undertakings,

since their dealings are mostly with non-members. It should be specifically laid down in Section 14(3) of the Income-tax Act that the exemption would not be available to the co-operative societies, if their total income exceeds Rs. 20,000. In view of the tax holiday given to new industrial undertakings under Section 15C of the Income-tax Act and also the limitation on the distribution of the profits of the co-operative societies under the various State laws, the changes proposed would not interfere with the growth of genuine co-operative societies. [Para. 7.81(4)]

- (5) A provision similar to Section 16(3) of the Income-tax Act should be made so as to cover cases of assets transferred by wife to the husband. A further amendment may also be made to Section 16(3) of the Income-tax Act so as to cover transfers of assets to minor children by the mother. [Para. 7.81(5)]

- (6) The law should be modified so as to provide that in cases where a father creates a trust for the benefit of his minor daughter with a stipulation that the income of the trust should be accumulated and added to the corpus and that the daughter should be entitled to receive the income only after attaining majority, such income of the minors would be taxed. [Para. 7.81(6)]

Section 9(2) of the Income-tax Act should be suitably amended so as to provide that in cases where, after transferring the ownership of a residential property to his wife or minor child, without adequate consideration, the transferor continues to reside in it along with the transferee, there is no escapement of proper tax liability. [Para. 7.81(7)]

Section 46A of the Income-tax Act should be amended so as to include the liabilities under the Wealth-tax Act, Expenditure-tax Act and Gift-tax Act also within the scope of that Section. [Para. 7.81(8)]

There is no justification for giving the marriage and children's allowance both to the husband and the wife where they are separately taxable. The law should be suitably amended. [Para. 7.81(9)]

Any industrial or public utility undertaking run as a department of the State Government should also be subjected to tax and, for this purpose, provision should be made in law as envisaged in Article 289(2) of the Constitution. [Para. 7.81(10)]

The law should be so amended that even on the assessee's cessation of his business, etc., or retirement from profession or death, income received after such cessation, retirement or death would be taxed. [Para. 7.81(11)]

In the case of companies in which the public are not substantially interested, set off of the earlier years' losses against subsequent profits should be allowed only if the shareholders in the year in which the income is earned are substantially the same as those in the years in which the losses were incurred. [Para. 7.81(12)]

Publicity

250. Evasion could be effectively checked by making public the information relating to the income, wealth etc., declared by the assessee in their returns. The Government may adopt either of the following two methods and prescribe the necessary procedure therefor:—

- (i) communication to any member of the public, on the payment of a specified fee, the amount of income, wealth, etc., declared by a person in his return;
- (ii) publication annually in a printed booklet form the names, addresses and declared income, wealth, expenditure, etc., of either all assesseees or those above a certain limit.

(Para. 7.86)

251. In view of the deterrent effect it would have on attempts at evasion, the names of all persons in whose cases penalties have been imposed for Rs. 5,000 or more for the concealment of income, wealth, expenditure, etc., should be published by the Commissioners, in the gazette as well as in the press, giving details of their names, addresses and amounts of penalties. If the assessee concerned is a company or firm, the names of all the directors of the company or partners of the firm, as the case may be, should be published unless it has been established that only a particular director or partner was responsible for the evasion. The publication should be made only after the penalty has become final in appeal and reference. Central Board of Revenue should have discretion to withhold the publication of names in suitable cases, but the number of cases in which such information was withheld, and the reasons therefor, should be given in the annual administration report but without mentioning the names of such persons.

(Para. 7.88)

Arousing public conscience

252. The following measures may be useful in arousing public conscience against tax evasion:—

- (i) People should be educated with regard to the real object of the collection of direct taxes, through press, radio and films.
- (ii) Steps should be taken to convince the tax-payers that the money collected through taxes is not spent wastefully but put to proper use.
- (iii) No official patronage or recognition or awards should be given to persons who have been penalised for concealment or in whose case prosecution proceedings have been taken. Such a person should not be allowed to become a member of any Committee or Commission appointed by Government.
- (iv) Tax evaders should be strictly dealt with and brought to book by the Department in future so that the widely-held feeling in the minds of the public that evasion pays and that evaders are treated lightly is removed. Prosecution proceedings should be launched wherever necessary.

- (v) The co-operation of the chambers of commerce and other professional bodies such as bar associations, medical associations, etc., should be enlisted in the matter of wiping out evasion.
- (vi) A special drive should be undertaken to rouse public conscience by enlisting the co-operation of leaders in the various walks of life. (Para. 7.89)

CHAPTER 8

ADMINISTRATION

Central Board of Revenue

253. It is neither practicable nor desirable to divorce administration entirely from policy making. The Central Board of Revenue should continue to function as the Department of Revenue. (Para. 8.5)

254. It will facilitate the joint functioning of the Central Board of Revenue, to a large extent, and result in a more efficient administration of the different tax laws, if the administration of the direct taxes and that of indirect taxes are entrusted to two separate Boards. However, as the new direct taxes have been introduced recently, and the bifurcation of the present combined Board might involve additional expenditure, the formation of two separate Boards for direct and indirect taxes is not immediately necessary. For the present, there should be two distinct Wings of direct and indirect taxes in the Central Board of Revenue with a common Chairman. After examining the working of the two separate Wings, Government may consider the feasibility of constituting separate Boards for direct and indirect taxes. (Para. 8.8)

255. A list of functions of the Central Board of Revenue where the Members should function jointly and individually should be drawn up and strictly adhered to. There should not be frequent changes in the status of the post of the Chairman or in the composition of the Board. (Para. 8.9)

256. There should be a separate Secretary for the Department of Revenue and this post and that of the Chairman of the Central Board of Revenue should be combined. (Para. 8.10)

257. The Central Board of Revenue should have one more Member to look after the general administrative and organisational matters relating to direct taxes. (Para. 8.11)

258. It should be laid down that each Member of the Central Board of Revenue can function independently on behalf of the Board in respect of the specific work allotted to him and that all orders passed by him should be treated as orders of the Board. In respect of appeals, however, it should be provided that at least two Members of the Board should hear them jointly. Applications for settlement, write off, etc., should be dealt with by the Chairman and two Members acting jointly. On matters of administrative policy as well as those relating to promotions and postings of officers, all the three Members along with the Chairman should take a joint decision. (Para. 8.12)

259. At least half the Members of the Central Board of Revenue dealing with direct taxes should be selected from amongst the officers of the Department. The tenure of appointment as a Member should normally be five years. (Para. 8.13)

260. The recruitment of the officers of the Income-tax Department to the Central Administrative cadre (Pool) of Officers should be increased considerably and greater facilities made available to them to acquire experience of other work. (Para. 8.14)

261. The officers and other staff in the administrative and technical sections of the Central Board of Revenue should be appointed, as far as possible, from amongst the departmental personnel, who have field experience. There should also be a periodical exchange of officers and staff between the Board and the field offices. (Para. 8.15)

262. In order to provide the Central Board of Revenue with expert legal advice in day-to-day work, a senior solicitor or advocate with adequate experience in direct taxes matters should be appointed as Legal Adviser in the office of the Board and given appropriate status and pay. (Para. 8.16)

263. There should be no false economy in engaging experienced and leading members of the Bar and paying the requisite fees of representation on tax matters for the Department. (Para. 8.17)

Directorates

264. The existing three Directorates of Inspection should be reorganised into the following four Directorates:

- (a) Directorate of Inspection.
- (b) Directorate of Investigation and Intelligence.
- (c) Directorate of Vigilance.
- (d) Directorate of Training, Statistics, Research and Publications. (Para. 8.20)

265. The Directorate of Inspection should carry out administrative inspections of the offices of the Commissioners and Inspecting Assistant Commissioners of Income-tax. It should also review and test-check the inspection of the work of the assessing officers carried out by the Inspecting Assistant Commissioners and suggest improvements for the organisation and methods of the working of the Department. (Para. 8.21)

266. The functions of the Directorate of Investigation and Intelligence are noted in recommendation Nos. 212 and 213. It should have six experienced Assistant Commissioners working as Specialists to deal with tax problems in respect of specified important industries and trades like textiles, iron and steel, sugar, paper, cement, mining, etc. (Para. 8.22)

267. It is of the utmost importance that the revenue administration should maintain the highest standards of morality and integrity. Besides keeping a constant vigil over the large number of personnel at different levels, the Directorate of Vigilance should see that cases of complaints and disciplinary proceedings are expeditiously dealt with and that dishonest officials are properly brought to book. (Para. 8.23)

268. The Directorate of Training, Statistics, Research and Publications should look after the work of the Training College for the gazetted officers, co-ordinate the training programmes of the non-gazetted staff, see to recruitment of personnel and departmental examinations, compile all the statistical information, carry out research studies in tax matters and be in charge of the publication of tax literature, books and manuals,

bulletins and journals, etc. The present office of the Statistician (Income-tax) should be merged with this Directorate. (Paras. 8.24 and 8.25)

269. An Annual Administration Report should be published by the Department and laid on the table of the Parliament. (Para. 8.26)

Commissioners of Income-tax

270. One more Commissioner of Income-tax should be appointed in each of the West Bengal, Bombay City and Bombay North charges. (Para. 8.29)

271. The cadre of Commissioners of Income-tax, Grade II should be abolished, and all the Commissioners should be in one unified grade and get the same scale of pay as given to other heads of departments like the Accountants General, Postmasters General, Divisional Commissioners, etc., as well as to the members of the Income-tax Appellate Tribunal. (Para. 8.31)

272. There should be further decentralisation and delegation of enlarged powers to the Commissioners of Income-tax in respect of incurring of expenditure on printing and purchase of stationery, legal charges, etc., as well as with regard to appointments, promotions and transfers. (Para. 8.32)

Deputy Commissioners

273. Creation of posts of Deputy Commissioners is not favoured. (Para. 8.34)

Assistant Commissioners

274. The Inspecting Assistant Commissioners should continue to advise and guide the assessing officers in assessment matters. Pre-assessment guidance and control by them is necessary for improving the quality of assessments and checking tax evasion. (Para. 8.39)

275. Inspecting Assistant Commissioners should give to the assessee, whenever asked for, an opportunity of being heard before issuing instructions to the assessing officers. (Para. 8.40)

276. As a general rule, Inspecting Assistant Commissioners should not do assessment work. However, about ten Assistant Commissioners should be entrusted with actual assessment work in important cases involving large revenues, detailed investigations and complicated questions of facts and law. (Para. 8.41)

277. The system of group charges should be extended and twenty-five more such charges created in important cities. (Para. 8.43)

278. The number of assessing officers under an Inspecting Assistant Commissioner in a non-group charge should be reduced to about twenty so that both administrative and regular inspection of assessment and collection work of each assessing officer is carried out every year. (Para. 8.44)

279. The Inspecting Assistant Commissioners in the group charges should also inspect the work of the assessing officers in the group. (Para. 8.45)

Assessing Officers

280. The Class II cadre of the Income-tax Officers should continue. There should be only one grade for Class I service with an integrated pay scale. (Para. 8.50)

281. The number of Class I posts of Income-tax Officers should be increased by about 100 and a corresponding decrease made in the number of Class II Officers. (Para. 8.51)

282. Income-tax Officers promoted from Class II to Class I should not be given any weightage *vis-a-vis* direct recruits to Class I. (Para. 8.52)

283. The present sanctioned strength of the Income-tax Officers should be increased by about 50. (Para. 8.53)

284. For purposes of evaluation of work and control of output of the assessing officers, categorisation of cases and fixation of disposal in standard units are necessary. (Para. 8.55)

285. The assessing officers should be relieved of the routine administrative work which should be attended to by the office supervisor. (Para. 8.56)

Inspectors

286. The assessing officers and the Inspecting Assistant Commissioners should exercise stricter control and supervision over the work done by the Inspectors. (Para. 8.58)

287. Inspector should be given statutory status under the other direct taxes Acts as under the Income-tax Act. He should carry a written authority under the signature and seal of the assessing officer specifying the points on which he has to make survey and other enquiries. (Paras. 8.59 and 8.60)

288. Merger of the existing two grades of Inspectors, i.e., Ordinary and Selection Grade is not favoured. (Para. 8.61)

289. The present sanctioned strength of Inspectors should be increased by 250. (Para. 8.62)

Ministerial and other staff

290. Each tax office except that of the Appellate Assistant Commissioner should have a whole time supervisory officer. There should be one supervisory officer for every ten clerks and out of the total supervisory posts at least one-third should be in the cadre of Supervisor. (Para 8.64)

291. Merging the cadre of Head Clerks with that of Supervisors is not favoured. Grade II cadre of Supervisors should be abolished and there should be only one grade of Supervisor. The present pay scales of the two grades should be integrated for this purpose. There should be Administrative Officers of Gazetted rank in the offices of the Commissioners and Directorates. (Para. 8.65)

292. The direct taxes Offices should be equipped with adequate ministerial staff. (Para. 8.67)

293. The number of Notice Servers and Class IV servants should be suitably reduced, the strength of the latter being too large. The anomaly in the classification of the Notice Servers and Daftries with similar scales of pay should be removed. Class IV staff should not be required to do

private and domestic work of the officers, and the nature of their official duties should be clearly defined. (Paras. 8.68 to 8.70)

Recruitment, training and promotion

294. Both direct recruitment and promotion in specific proportions are necessary to secure a correct and balanced blending of fresh talent and mature experience. The normal quota for promotion to the cadres of Inspectors and Upper Division Clerks should remain at 50 per cent. as obtaining at present, and no direct recruitment need be made to the cadre of Class II Income-tax Officers. Merit and efficiency should be the sole criteria for filling of selection posts in any cadre and quality should not be sacrificed merely for reaching the quotas fixed. (Paras. 8.71 and 8.72)

295. While allotting the candidates who are successful in the combined competitive examination held by the Union Public Service Commission, to the various Class I services, a due proportion of the higher ranking candidates should be posted to the direct taxes Department. (Para. 8.74)

296. The ministerial staff should also be recruited on the basis of open competitive examinations. Preference should be given to persons possessing commercial and accountancy qualifications. The final selection should be made by Committees consisting of at least three persons. (Para. 8.75)

297. There should be a whole time Principal in charge of the Training College for Income-tax Officers. He should be assisted by a complement of full time instructors in the various subjects. (Para. 8.78)

298. The Training College should provide specialised training for sixteen months, after the four months foundational training course for all services. Greater attention should be paid to the practical training of the Probationary Income-tax Officers. Emphasis should be laid on developing the qualities of leadership, initiative and self-confidence amongst them. Adequate instruction should also be given in the techniques and problems of public relations and administration. (Paras. 8.79 and 8.80)

299. Officers appointed as Income-tax Officers on promotion from the lower ranks should be given a restricted course of training for at least six months in the Training College. (Para. 8.81)

300. The Training College should organise regular refresher courses of four months' duration for senior assessing officers with five to eight years of service. (Para. 8.82)

301. Selected Assistant Commissioners should be sent periodically to the Administrative Staff College at Hyderabad for an all-round advance course in administration and management. (Para. 8.82)

302. There should be four regional centres for training of Inspectors each under the charge of a senior Income-tax Officer. (Para. 8.83)

303. Arrangements for the training of ministerial staff under the charge of a selected senior Supervisor should be made in each Commissioner's charge preferably at the respective headquarters. (Para. 8.84)

304. Instructors should themselves be qualified and given a short course of training. (Para. 8.85)

305. No change in the existing classification of the various posts, for purposes of promotion into 'Selection' and 'non-Selection' posts is considered necessary except with regard to Inspectors (Selection Grade). (Para. 8.86)

306. The present forms of annual confidential reports should be rationalised. The counter-signing officer should, in particular, give his own views about the suitability of the person reported upon for promotion to the next higher grade. (Para. 8.87)

307. Seniority for purposes of promotion to the next higher grade should be regulated with reference to the date or the year of passing the departmental examination prescribed for the grade concerned. (Para. 8.89)

308. The existing restriction not permitting a person to appear in the departmental examination for a higher grade until he is actually working in the immediate lower grade should be relaxed. A period of five years should be fixed for taking the next higher examination after the person concerned has passed the lower examination. (Para. 8.90)

309. The benefit of granting two advance increments on passing the departmental examination for the next higher grade should be made available to all categories of staff including the stenotypists and stenographers. The benefit should also not be limited to the minimum of the pay scale of the next higher grade. (Para. 8.91)

Conditions of service

310. The officers of the Income-tax Department in particular require special consideration in respect of pay scales and conditions of service having regard to their nature of work and the difficult duties they have to perform. The pay structure of all ranks, specially in respect of the gazetted officers of this important Department should be commensurate with their powers and responsibilities. (Para. 8.94)

311. Every effort should be made to depute a sufficiently large number of the officers of the Income-tax Department to other departments and organisations, but they should come back to the Department after a specified tenure. (Para. 8.95)

312. The delay in confirming temporary/officiating officials should be avoided, and such of the temporary posts as have been in existence for more than three years and which are not likely to be discontinued should be made permanent. (Para. 8.96)

313. Periodical transfers of staff from one station to another and from one post to another are necessary, but they should not be too frequent. (Para. 8.97)

314. One month's notice of transfers should generally be given to the officers. During this period they must pass final orders in all cases where hearings and investigations have been completed and endeavour to complete as many of the partly heard matters as possible. Before handing over charge on transfer, officers of all ranks should be required to send to their immediate superior officers, a certificate to the effect that all fully heard cases have been disposed of. A list of the partly completed work with full details and reasons for the pendency should also be furnished by such officers. (Para. 8.99)

315. The Government should, in consultation with the Comptroller and Auditor General, devise suitable means for avoiding delays in the issue of pay slips, payment of leave salaries and settlement of pension, gratuity and provident fund claims, etc. (Para. 8.100)

316. All staff employed in survey and outdoor enquiry work as also assessing officers in special survey circles should be given reasonable conveyance allowance. (Para. 8.101)

317. Suitable arrangements should be made with the State Governments to ensure that there is no discrimination against Central Government officers in the matter of providing accommodation in Circuit Houses, Rest Houses, Inspection Bungalows, etc., belonging to the different States, and in regard to the charges for such accommodation as compared to the facilities given to the State Government officers. (Para. 8.102)

318. Adequate funds should be specifically allotted for the construction of residential houses for the officers and staff of the Department. So long as this is not done, arrangements should be made to hire suitable accommodation for them. (Para. 8.103)

319. The Central Government should organise schools in the various important cities and towns for the education of the children of all the Government servants. In the meantime, arrangements should be made with the State Governments and important educational Institutions for securing admission on a priority basis to the schools for the children of a transferred official. (Para. 8.104)

320. Adequate medical facilities should be afforded to the staff of the Department. (Para. 8.105)

321. The Department should provide cheap holiday homes at hill stations and other health resorts for its employees. (Para. 8.106)

322. The various staff welfare activities should be further enlarged. (Para. 8.107)

323. Staff Committees should be constituted in all Commissioners' charges at their respective headquarters. (Para. 8.108)

324. A sense of discipline and responsibility should be inculcated in the staff. Cases of indisciplined conduct should be promptly looked into and due steps taken to punish the wrong doers, wherever necessary. (Para. 8.109)

Office equipment and accommodation

325. Better office accommodation and necessary supply of office equipment and appliances will not only improve the working conditions of the staff but will result in increased efficiency and greater convenience to the assesseees. (Para. 8.110)

326. Timely and adequate supply of stationery and the forms to the tax offices should be ensured. For this purpose, the requirements of the Department should be given a sufficiently high priority. The responsibility for arranging supply of stationery and printing of forms, etc., for the Department should be entrusted to a separate section of Printing and Stationery. The Commissioners should have full financial powers for the local purchase of stationery or printing of forms if their requirements are not met by the Controller of Printing and Stationery in time. The subordinate authorities should also be given suitable financial powers for such local arrangements. (Para. 8.111)

327. Typewriters should be supplied to the offices in sufficient numbers and other modern appliances also made available looking to the needs and exigencies of work. (Para. 8.112)

328. Sufficient funds should be specifically allotted for the construction of office buildings for the Department and the rules regarding hiring of private accommodation be also suitably liberalised. (Para. 8.113)

Cost of collection

329. The increase in the cost of administration during the past years was justified and necessary. The cost of administration should, no doubt be kept as low as practicable but it should not be at the cost of the Department's efforts in checking tax evasion and improving its overall efficiency.
(*Paras. 8.115 and 8.116*)

Prevention of malpractices

330. Highest standards of integrity, honesty and fairplay are essential in the Department. The stakes involved in a Revenue Department are very high and, therefore, a very strict vigilance is called for. The Department should have a strong and effective machinery but at the same time the procedures and the methods of work should be so designed as not to cause any fear of harassment or inconvenience to the assesseees.
(*Paras. 8.117 to 8.119*)

331. Apart from the Directorate of Vigilance, there should be vigilance sections in each Commissioner's charge for organising and co-ordinating the vigilance work in the charge and for making expeditious enquiries into complaints received and early finalisation of the disciplinary proceedings.
(*Para. 8.119*)

332. All officials of the Income-tax Department should be required to send every fourth year a complete statement of their total wealth, both immovable and movable, including those in the names of wife and children and other family members. The Income-tax assessments of the gazetted officers of the Department should be centralised in a circle at headquarters.
(*Para. 8.120*)

333. Accepting of gifts on weddings and other occasions from other than relations or close friends and the acceptance of private hospitality, free entertainments and other obligations from the public should be strictly discountenanced.
(*Para. 8.121*)

334. Undue importance, particularly in a taxing department, should not be attached to anonymous and pseudonymous complaints and nothing should be done to disturb the morale of the officers in the discharge of their duties.
(*Para. 8.122*)

335. The Government should take a policy decision so as to prevent the officers of the Department leaving Government service prematurely and joining private employment.
(*Para. 8.123*)

336. Provisions similar to Section 13(3) as well as Sections 7(7) and 50(1) of the U.K. Income-tax Act, 1952 should be incorporated in the direct taxes statutes, but to safeguard against the misuse of these powers, the complaints should first be made to the Central Board of Revenue who would initiate proceedings after making necessary enquiries. (*Para. 8.125*)

Representation of assesseees by tax experts

337. Restriction of the right to represent assesseees to the Chartered Accountants and the Lawyers would cause undue hardship to the small income assesseees and the Income-tax practitioners should, therefore, be allowed to continue.
(*Para. 8.127*)

338. To improve the quality of representation by Income-tax practitioners, the minimum educational qualification for them should be a

degree in commerce of any of the recognised Universities. In addition they should be required to pass a written examination in accountancy and tax laws to be held by the Department. The existing Income-tax practitioners should, however, be allowed to continue to represent assesseees irrespective of their qualifications and they should be exempted from taking this test. The Income-tax practitioners should also be permitted to represent tax-payers under all the direct taxes laws. (Para. 8.128)

339. It would be neither practicable nor desirable to completely prohibit Departmental persons from tax practice after retirement or resignation. However, they should not be allowed to represent assesseees for a period of two years after retirement or resignation without the previous permission of the Central Board of Revenue except in cases of persons who desire to engage in tax practice on resigning within a period of three years after joining the Department. The Board should give the permission subject to the condition that the person concerned will not be entitled to tax practice in the State or the Commissioner's charges where he had served at any time during the three years immediately preceding his retirement or resignation. As regards the officers having all-India jurisdiction like the Directors, permission for tax practice should be given to them on the further condition that they should not represent assesseees whose cases have been dealt with by them during the three years preceding their retirement or resignation. (Para. 8.130)

340. Admission of the various classes of professional experts to tax practice should be regulated by a system of registration with the Department. (Para. 8.131)

341. Disciplinary jurisdiction over the Income-tax practitioners should continue to remain with the Commissioners, who should use their authority with greater vigilance. (Para. 8.133)

342. In the case of lawyers and chartered accountants the present procedure with regard to disciplinary action and the ultimate jurisdiction of the High Court as provided for under Section 10(1) of the Bar Council Act, 1926 and Section 21 of the Chartered Accountants Act 1949 should continue. However, a slight departure from the general procedure would be justified. The report of the enquiry of the Bar Council or the District Judge in the case of misconduct by a lawyer and of the Disciplinary Committee of the Institute of Chartered Accountants in case of one of its members should be submitted to the president of the Income-tax Appellate Tribunal, who will pass orders after hearing the complainant, the respondent and the Council of the Institute of Chartered Accountants or the Bar Council as the case may be. This procedure is suggested subject to our recommendation about the appointment of a High Court Judge as the President of the Income-tax Appellate Tribunal being accepted. Any appeal from the decision of the President of the Income-tax Appellate Tribunal will go to the respective High Courts.

(Paras. 8.134 and 8.135)

343. The Government nominee on the Disciplinary Committee of the Council of the Institute of Chartered Accountants should be a representative of the Central Board of Revenue. Similarly, whenever such a case regarding the conduct of a lawyer before the direct taxes authorities is inquired into by the Bar Council, the Standing Counsel of the Department should be co-opted as a member of that Council for this purpose, if he is not already a member of the Bar Council concerned.

(Para. 8.136)

344. If a tax expert is finally convicted for evasion of tax as a result of prosecution under the provisions of the direct taxes Acts, he should be straightaway disqualified from tax practice and his name removed from the register. Similarly, the conviction of a tax expert under the direct taxes Acts on charges of abetting or aiding his clients in tax evasion, should result in automatic disqualification from tax practice. Any tax expert, who is penalised under the direct taxes Acts for concealment of income, wealth, estate, gift or expenditure should be disqualified from representation after the penalty proceedings have become final. However, the usual disciplinary procedure should be followed in such cases of penalty and disqualification should not be automatic.
(Para. 8.137)

345. The standards about the code of conduct and responsibilities that apply to Chartered Accountants and Lawyers in the United Kingdom should apply to Chartered Accountants and Lawyers in India.
(Paras. 8.138 and 8.139)

CHAPTER 9

PUBLIC RELATIONS

Factors influencing public relations

346. While the officers of the Department have necessarily to be firm in the discharge of their duties, and function without fear or favour, they must be sympathetic to the taxpayers, and show due consideration for their doubts and difficulties. (Para. 9.4)

347. It must be the duty of every officer of the Department to bring to the assessee's notice any allowance, rebate or relief that may be legitimately due to them. The higher authorities should view any omission in this regard very seriously and take such punitive and remedial action as may be necessary in the circumstances of the case: (Paras. 9.6 and 9.7)

348. The criterion for judging the worth of the assessment work, should be not the highly-pitched assessments which are ultimately reduced in appeals, but the making of realistic assessments which stand the test of appeal. The existing administrative instructions to this effect, need to be re-emphasised.

349. Effective steps should be taken to see that the records are kept properly and that there is a fool-proof system for getting and filing of necessary receipts for the various documents, papers, payments etc. (Para. 9.10)

350. The targets for disposal of assessments and collection of taxes must be so fixed as do not, in any way, lead to over-assessments and harassment of the assessee. (Para. 9.11)

351. The Central Board of Revenue should see that its instructions prohibiting the officers from fixing up all the cases at the same hour of the day, and requiring them to call the assessee at suitable intervals distributed throughout the day are scrupulously followed and the daily cause list placed on the notice board. (Para. 9.12)

352. The officers should observe the office hours punctually and should see that the assessee is not made to spend more than the minimum necessary time in the tax offices. (Para. 9.14)

353. The officers should spare at least half an hour of their working period every day to attend to persons who visit the tax offices on their own to make various enquiries and seek clarifications. The period for interviews should be prominently notified. Besides, all tax offices should have Enquiry Counters where the assessee can make various routine enquiries without having to wait to see the officers. (Para. 9.15)

354. The staff dealing with the issue of tax clearance certificates should be strengthened, and in particular, the number of Income-tax Officers, Foreign Section, entrusted with the issue of the certificates under Section 46A of the Income-tax Act should be enlarged so that there is at least one such officer at the headquarters of each State or the Commissioner of Income-tax. (Para. 9.17)

355. An applicant for Tax Clearance/Exemption Certificates under Section 46A of the Income-tax Act should be required to furnish, in duplicate, an application in the prescribed form to his assessing officer who should deliver one copy of the Authorisation to the applicant and send another copy of it along-with a copy of the application, duly endorsed, to the Income-tax Officer, Foreign Section, concerned. The Applicant or his representative should then present the Authorisation to the Income-tax Officer, Foreign Section for exchanging it with the Tax Clearance/Exemption Certificate. (Para. 9.19)

356. All the forms necessary for obtaining the various certificates should be standardised and printed, and made freely available to the assessee on request. (Para. 9.20)

357. All complaints of inconvenience in the tax offices should be quickly remedied. Adequate and proper amenities, such as waiting rooms, furniture, reading material, cool drinking water, canteens, public telephones, sanitary arrangements, parking space, etc. for the assessee and their representatives should be provided in all tax offices. (Para. 9.22)

Information and guidance to the assessee

358. Greater attention should be paid to organised departmental publicity, and more tax literature in the form of pamphlets, booklets etc. dealing with the various branches of taxation should be issued. Detailed explanatory notes about the various forms of returns should also be made freely available to the public. The Department should also publish a Tax Journal. (Para. 9.24)

359. The various notifications and circulars issued by the Central Board of Revenue having a bearing on the application of the taxation laws and affecting the assessee's interests, directly or indirectly, should be made known to the public. (Para. 9.26)

360. The modern media of communication with the public such as radio, motion pictures and other visual aids, should be regarded as essential in the programme of developing public relations. (Para. 9.27)

361. In places other than those where Public Relations Officers function, Enquiry Counters, should be responsible for assisting the assessee in filling up various return forms, explaining their difficulties and doubts, answering their various queries and guiding them in all possible ways. (Para. 9.28)

362. Facilities provided by the chambers of commerce etc. to educate their members about the tax matters should be further enlarged and the Department should usefully establish some liaison arrangements with them for this purpose. (Para. 9.30)

363. It will facilitate the administration of the tax laws and avoid undue inconvenience to the assessee if the Central Board of Revenue or the Commissioner gives opinion on the points referred by the assessee, provided that all the facts relevant to the points at issue are made available and the relevant points are not pending for decision before any appellate authority. , (Para. 9.31)

Redress of grievances

364. All the gazetted officers of the Department, in particular, the Inspecting Assistant Commissioners and the Commissioners, should keep their doors open for any member of the public to walk in and voice his grievances. These officers should, for the sake of convenience, keep certain fixed hours everyday for the public to meet them. Complaint and suggestion boxes should be provided in all tax offices including those of the Assistant Commissioners, Commissioners and Appellate Tribunal Benches. (Para. 9.33)

Public Relations Officers

365. The Public Relations Officers can prove very useful and helpful in promoting better relations between the Department and the public. There should be a whole-time Public Relations Officer in the charge of each Commissioner of Income-tax. The Public Relations Officers in important places like Bombay and Calcutta should be of the rank of Assistant Commissioners, and those in other places should be at least senior Class I Grade I officers.

366. One of the Members of the Central Board of Revenue should be in specific charge of 'public relations'. (Para. 9.40)

Direct Taxes Advisory Committees

367. A Direct Taxes Central Advisory Committee should be set up for the Headquarters organisation under the Chairmanship of the Union Minister for Revenue and Civil Expenditure. In addition, similar Committees should be constituted separately for the various regional organisations under the Chairmanship of the Commissioner concerned. These Committees should fully represent the important interests and view points, and consist of Members of Parliament, representatives of Central and/or State Governments, commerce, industry and other organisation and professional tax experts. They should advise the Administration on measures for developing and encouraging mutual understanding and co-operation between the tax-payers and the Department.

(Paras. 9.44 to 9.46)

(Sd.) MAHAVIR TYAGI—Chairman.

(Sd.) RAJENDRA PRATAP SINHA—Member.

(Sd.) B. M. GUPTE—Member.

*(Sd.) G. P. KAPADIA—Member.

(Sd.) K. S. SUNDARA RAJAN—Member.

(Sd.) F. H. VALLIBHOY,
Secretary.

NEW DELHI,

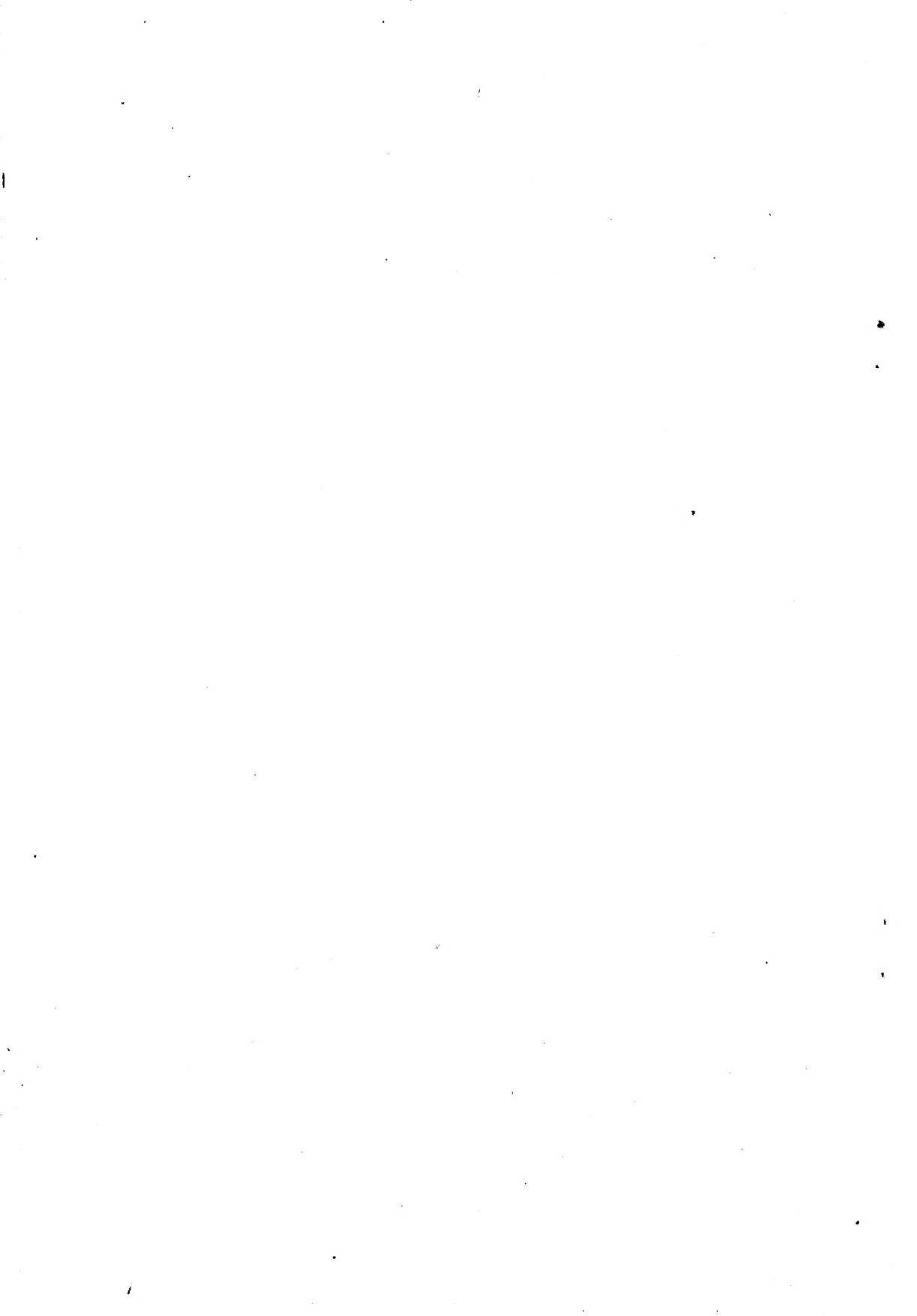
Dated the 25th November, 1959.

*Summary signed subject to my separate memorandum given separately.

NOTE : Shri G. P. Kapadia has recorded a separate memorandum of dissent, comments and recommendations.

Shri K. S. Sundara Rajan has dissented from the recommendations at Serial Nos. 102 and 336. He has also abstained from expressing his opinion on the recommendations at Serial Nos. 253 to 259.

APPENDICES



APPENDIX I

Correspondence between the Chairman and the Finance Minister regarding the terms of reference

D.O. No. DTAEC-58/Ch/2

Direct Taxes Administration,
Enquiry Committee,
Ministry of Finance,
(Department of Revenue),
Central Revenues Building,
New Delhi, 7th October 1958.

My dear Morarji Bhai,

*Direct Taxes Administration Enquiry Committee—Terms of reference to
—Clarification re:*

The Direct Taxes Administration Enquiry Committee was appointed with the following terms of reference:

“To advise Government on the administrative organisation and procedures necessary for implementing the integrated scheme of direct taxation with due regard to the need for eliminating tax evasion and avoiding inconvenience to the assesseees.”

2. One of the very first question that came up for consideration in the preliminary discussions the Committee had with the Chambers of Commerce and Departmental Officers was whether it would be competent for the Committee to suggest changes in the substantive provisions of the Direct Taxation Statutes. It appears to the Committee that the terms of reference do allow such recommendations to be made, because without such changes, the administrative organisation and procedures necessary for implementing the integrated scheme of Direct Taxation cannot be achieved. The Committee would like to be assured that their interpretation is correct.

3. There are certain other changes which have been suggested which affect the charging provisions of the existing statutes. Such changes may not have a direct bearing on the administrative organisation or procedure, but are, in the opinion of the Committee, essential if tax evasion is to be eliminated or inconvenience to assesseees is to be avoided. The Committee feel that even if the terms of reference do not strictly cover such recommendations, the usefulness of their report will be considerably reduced if they are precluded from making recommendations of this nature. The Committee would be glad to know whether in the opinion of the Government the terms of reference are wide enough to cover such recommendations. If the Government feel that they are not, it might kindly be indicated whether the Government would be willing to enlarge the scope of the terms of reference to permit such recommendations to be made.

4. As the Government are aware, the Committee have issued their Questionnaire and the work is in full stride. An early clarification of the points raised in the preceding paragraphs would, therefore, be welcomed by the Committee.

Yours sincerely,
Sd. Mahavir Tyagi,
(Chairman).

Shri Morarji Desai,
Finance Minister,
NEW DELHI,

No. 1447-FM/58
FINANCE MINISTER,
INDIA.

New Delhi,
19th October 1958.

My dear Tyagi,

D.T.A.E. Committee—Terms of reference to—Clarification of.

Will you kindly refer to your D.O. No. DTAEC/CH/2, dated the 7th October 1958?

2. With reference to para 2 of your letter I agree that the terms of reference do permit the Committee to suggest changes in the substantive provisions of the Direct Taxation Statutes so far as they relate to the administration, organisation and machinery necessary for implementing the scheme of direct taxes. As regards other provisions, I suggest you confine yourselves to such matters only as have a bearing on the problems of tax evasion and of harassment. A wider scope will make the task of the Committee too unwieldy because I think as it is, the Committee has a difficult task before it.

Yours sincerely,
Sd. Morarji Desai.

Shri Mahavir Tyagi,
Chairman,
Direct Taxes Administration Enquiry Committee,
Central Revenues Building,
New Delhi.

APPENDIX II

List of the persons who sent Memoranda in response to the Press Note, dated 18th June 1959 issued by the Committee inviting Chambers of Commerce, Trade Associations and other interested bodies and persons to send their views and suggestions with a view to enabling the Committee to draw up a comprehensive questionnaire.

A. PUBLIC

I. CHAMBERS AND OTHER ORGANISATIONS

S. No.	Name	Address
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ANDHRA PRADESH

- | | | |
|----|--|-------------------------------------|
| 1. | Andhra Pradesh Grain & Seeds Merchants' Association. | Pahada Niwas, Osmanganj, Hyderabad. |
| 2. | Chamber of Commerce & Industry. | P.B. No. 98, Vijayawada-1. |
| 3. | Tenali Wholesale Kirana Merchants' Association. | Tenali, Guntur District. |

ASSAM

- | | | |
|----|-----------------------------------|--------------------------|
| 4. | Darrang Chamber of Commerce. | Tezpur. |
| 5. | Indian Tea Planters' Association. | P.B. No. 74, Jalpaiguri. |

BIHAR

- | | | |
|----|----------------------------|--|
| 6. | Bihar Chamber of Commerce. | Judges Court Road, P.B. No. 71, Patna-1. |
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BOMBAY

- | | | |
|-----|--|---|
| 7. | All India Importers' Association. | Churchgate House, 31-32, Churchgate Street, Fort, Bombay-1. |
| 8. | Association of Merchants & Manufacturers of Textile Stores and Machinery, India. | Sir Vithaldas Chambers, 16, Appollo Street, Bombay-1. |
| 9. | The Anjar Merchants' Association | Anjar (Kutch). |
| 10. | Bombay Chamber of Commerce and Industry. | Mackinnon Mackenzie Building, Ballard Estate, P.B. No. 473, Bombay-1. |
| 11. | Bombay Shareholders Association. | Aga Khan Building, Dalal Street, Fort, Bombay. |
| 12. | Bombay Chartered Accountants' Society. | 60, Forbes Street, Fort, Bombay. |

S. No.	Name	Address
13.	Chartered Accountants' Association	C/o Messrs. Raman Lal G. Shah & Co. C.As., Bombay. Mutual Building, Relief Road, Ahmedabad.
14.	The Federation of Gujarat Mills and Industries.	Ramesh Chandra Dutta Road, (Race Course Road) Baroda.
15.	The Federation of Electricity Undertakings of India.	Killick House, Home Street, Bombay.
16.	Gujarat Vapari Mahamandal (Gujarat Chamber of Commerce).	Gujarat Samachar Building, Khanpur, Ahmedabad-1.
17.	The Indian Merchants' Chamber	Lalji Naranji Memorial, 76, Veer Nariman Road, Churchgate, Fort, Bombay.
18.	The Indian Cotton Mills Federation.	Elphinstone Building, Veer Nariman Road, P.B. No. 95, Bombay.
19.	The Mahratta Chamber of Commerce and Industry.	Tilak Road, Poona-2.
20.	Mineral Industry Association.	S. Residency Road, Nagpur-1.
21.	The Mill Owners' Association.	Elphinstone Building, Veer Nariman Road, No. 85-F, Bombay. 1.
22.	Nag-Vidarbha Chamber of Commerce.	Temple Road, Civil Station, P.B. No. 33, Nagpur.
23.	Panchkuva Cloth Merchants' Association.	518, Panchkuva, Ahmedabad-2.
24.	Saurashtra Chamber of Commerce.	M.K. Gandhi Road, Lokhand Bazar, Bhavnagar.
25.	The Textile Mills Association.	Subedar's Bungalow, B. Street, No. 4, Dhantoli, P.B. No. 3, Nagpur.
26.	Tax Payers' Association of India, Ltd.	Fort Chambers 'A' Dean Lane, Hamam Street, Fort, Bombay.
27.	Vidarbha Chamber of Commerce.	Akola.

DELHI

28.	Delhi Regional Council of the Institute of Chartered Accountants of India.	Mathura Road, New Delhi.
29.	Federation of Indian Chambers of Commerce and Industry.	Federation House, New Delhi.
30.	The Institute of Chartered Accountants of India.	P.B. No. 268, Mathura Road, New Delhi.
31.	Punjab and Delhi Chamber of Commerce.	Scindia House, Curzon Road, P.B. No. 130, New Delhi.

S. No.	Name	Address
KERALA		
32.	The Cochin Chamber of Commrce.	P.B. No. 16, Cochin-I.
33.	The Chamber of Commerce, Trichur.	Trichur.
34.	The Wholesale Merchants' Association.	Karunagapally.
MADHYA PRADESH		
35.	The Berhampur Chamber of Commerce.	Berhampur City, Ganjam Dt.
36.	Chamber of Commerce.	Ujjain.
MADRAS		
37.	Tamilnadu Tobacco Merchants' Association.	67, Ammansannathi, Madurai.
38.	The Virudhanagar Chamber of Commerce.	Virudhanagar.
MYSORE		
39.	Karnatak Chamber of Commerce	Hubli.
40.	The Merchants' Association	Bijapur.
RAJASTHAN		
41.	Sri Ganganagar District Income-tax Practitioners' Association.	Sriganganagar.
UTTAR PRADESH		
42.	Upper India Chamber of Commerce.	Kanpur.
WEST BENGAL		
43.	The Bengal Chamber of Commerce and Industry.	P.B. No. 280, Royal Exchange, Calcutta.
44.	Bharat Chamber of Commerce.	State Bank Building, Calcutta-7.
45.	Calcutta Kirana (Spices) Merchants Association.	29, Armenian Street, Calcutta-I.
46.	Indian Chamber of Commerce.	India Exchange Place, Calcutta-I.

II. INDIVIDUALS

S. No.	Name	Address
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ANDHRA PRADESH

47. Shri Simhapuri Vanijya Mandali. 'Stone House' Pet, Nellore.

BOMBAY

48. Messrs. C. C. Chokshi & Co. Chartered Accountants Back Bay Reclamation, Bombay-1.
49. Shri Dadubhai M. Amin, M.L.C. Patel Society Ellis Bridge, Ahmedabad.
50. Messrs. Dalal Desai & Kumana. Chartered Accountants, Mherwan Building, Sir Phirozshah Mehta Road, Fort, Bombay-1.
51. Khan Bahadur Shri J. B. Vachha. Binoo Mansion, Cumballa Hill, Bombay-26.
52. Shri L. R. Mehta. Tankervilla, Gowalia Tank Road, Cumballa Hill, Bombay-26.
53. Shri M. C. Sharma. Income-tax Consultant, Bullion Association Building, Sheikh Memon St. Bombay-2.
54. Shri N. H. Pandia. Hon'y. Secretary, Bombay Legal Aid Society, Hamam House, Hamam St. Fort, Bombay.
55. Shri P. L. Asher. "ANAND" Peddar Road, Bombay-23.
56. Shri P. V. Karep. Advocate, High Court, Angre's Wadi, Bombay-4.
57. Dr. (Miss) P. P. Dalal. Forjett House, Forjett St., Bombay.
58. Shri R. K. Dalal. C/o M/s. Dalal and Shah Chartered Accountants, 49-55, Apollo St. Fort, Bombay.
59. Shri R. Varadachari. 'Shiv Shanti Bhawan' Queens Road, Bombay-1.
60. M/s. Ramn Lal G. Shah & Co. Chartered Accountants, Bombay Mutual Building, Relief Road, Ahmedabad.
61. Shri S. N. Khanna. Advocate, Supreme Court, "Thakur Niwas" Sir Jamshedji Tata Road, Churchgate, Bombay.
-

S. No.	Name	Address
62.	Shri Shriyans Prasad Jain . . .	15-A, Elphinstone Circle, Fort, Bombay-I.
63.	Shri V.D. Mazumdar . . .	Roxana, 109 Queens Road, Fort, Bombay.

DELHI

64.	Shri J.K. Dindod, M.P. . . .	49-B, South Avenue, New Delhi.
65.	Shri K.R.K. Menon . . .	Chairman, Industrial Finance Corporation, New Delhi.
66.	M/s Delhi Cloth & General Mills Co. Ltd.	Bara Hindu Rao, P.B. No. 1039, Delhi.
67.	Shri P.L. Jaitly . . .	Chartered Accountant, Kishnor Manzil, East Park Road, New Delhi.
68.	Shri P.R. Chhabra . . .	K-5/29, Model Town, Delhi-9.
69.	Shri P. Satyanarayana Rao . . .	Member, Law Commission, 5 Jorbagh, New Delhi.
70.	M/s Raj K. Tandon & Co. . .	Chartered, Accountants, Tandon House, 23, Daryaganj, Delhi.

MADHYA PRADESH

71.	Shri R.G. Trivedi (for Chief Justice of Madhya Pradesh).	Registrar, High Court, Madhya Pradesh, Jabalpur.
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MADRAS

72.	Shri A. Mohamed Ubaidulla. . .	Chartered Accountant, 5 Marakayar Lebbhai Street., Madras-I.
73.	M/s Chari & Co. . . .	Chartered Accountants, "Balachandra" P.B. No. 41, 3 Arantanji Road, Pudukottai, Madras.
74.	Shri C.S. Rama Rao Sahib . . .	Special Counsel (Income-tax) "Chandra Villas" Luz., Mylapore, Madras.
75.	Shri V.P. Choudary . . .	Member, Income-tax Appellate Tribunal, 26 Sterling Road, Chetput, P.O. Madras 31.

ORISSA

76.	Shri H. Mahapatra . . .	Advocate, Supreme Court, Stanley Road, Cuttack 2.
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PUNJAB

77.	Shri Chunnilal Nayar . . .	Chairman, Modern Textile Mills (P) Ltd., Textile Manufacturers Verka, Amritsar.
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S. No.	Name	Address
UTTAR PRADESH		
78.	Shri Damodar Das	Advocate and District Government Counsel, Shahjahanpur.
79.	Shri Ramesh Chandra Agarwal .	15/253, Civil Lines, Kanpur.
80.	Shri R. K. Das	Member, Income-tax Appellate Tribunal, 23A, Thorn Hill Road, Allahabad.
81.	Shri Sital Prasad	Kamla Tower, Kanpur.

WEST BENGAL

82.	Shri B. Das	Khagra, P.O. Distt. Murshidabad.
83.	Shri B. N. Mukerjee	Member, Income-tax Appellate Tribunal, 20/1, Gurusaday Road, Calcutta.
84.	Shri C. R. Chakraverty	46/A, Netaji Subhash Road, Calcutta-1
85.	Messrs. Dhanuka & Sons	Stock and Share brokers, 7, Lyons Range, Calcutta.
86.	Shri M. Bhattacharyya & Co. . . .	Chartered Accountants, 11 Old Post Office Street, Calcutta-1.
87.	Dr. N. C. Sen Gupta	P93, Manoharpukur Road, Calcutta-29
88.	Messrs. Singhi & Co. . . .	Chartered Accountants, 1-B, Old Post Office Street, Calcutta-1.

B. DEPARTMENTAL**I. DEPARTMENTAL ASSOCIATIONS**

89.	Andhra Income-tax Department Class III Officers' Association.	Chinoy Mansions, Buckinghampet P.O. Vijaywada-2.
90.	Assam Income-tax Ministerial Officers' Association, Tripura Unit.	Tripura Unit, Agartala.
91.	Bareilly Income-tax Staff	Bareilly.
92.	Bengal Income-tax (Gazetted) Service Association.	3, Govt. Place West, Calcutta.
93.	Bihar & Orissa Non-gazetted staff Association & Class IV Staff Association.	Patna.
94.	The Central Revenue Directorates Non-gazetted Officials Association.	New Delhi.
95.	The Hyderabad I.T. Gazetted Services Association.	Income-tax Office, Abid Road, Hyderabad-Deccan.
96.	Income-tax Inspectors Association West Bengal.	2, Justice Chandra Madhaw Road, Calcutta-20.

S. No.	Name	Address
97.	Income-tax Inspectors Association.	Kanpur (U.P.)
98.	The Income-tax (Gazetted) Services Association.	Delhi.
99.	Indian Revenue Service (I. T.) Association.	Calcutta Branch, 3, Govt. Place West, Calcutta-1.
100.	Mysore State I.T. (Gazetted) Services Association.	United India Buildings, Bangalore-2.

II. DIRECTORS OF INSPECTION

- 101. Shri K. P. Sinha.
- 102. Shri N. K. Saksena.
- 103. Shri P. Mukherji.
- 104. Shri Raj Singh.
- 105. Shri S. P. Lahiri.

III. COMMISSIONERS OF INCOME-TAX

- 106. Shri A. De.
- 107. Shri A. R. H. Naik.
- 108. Shri K. D. Dholakia.
- 109. Shri M. E. Rahman.
- 110. Shri M. Hamid Mirza.
- 111. Shri N. D. Mehrotra.
- 112. Shri P. T. Ranadive.
- 113. Shri R. Kothandaraman.
- 114. Shri S. P. Jain.
- 115. Shri S. K. Gupta.
- 116. Shri S. A. L. Narayana Row.
- 117. Shri T. Gopala Menon.
- 118. Shri V. V. Subramanian.
- 119. Shri W. K. Gharpurey.

DEPARTMENTAL GAZETTED OFFICERS

ANDHRA PRADESH

ASSISTANT COMMISSIONERS

- 120. Shri F. G. Jilani.
- 121. Shri R. V. Ramaswami.
- 122. Shri S. M. Pattanaik.
- 123. Shri V. R. Bapat.
- 124. Shri S. V. Ramaswamy.

INCOME-TAX OFFICERS

125. Shri A. V. Swaminathan.
126. Shri A. Vaidyanathan.
127. Shri D. Rama Rao.
128. Shri D. S. Sarma.
129. Shri G. Narayanarao.
130. Shri G. Siri Srinivasarao.
131. Shri G. V. Raman.
132. Shri Nagabhushan Rao.
133. Shri K. J. Reddy.
134. Shri K. Padmanabhan.
135. Shri Satya Narayana.
136. Shri K. V. Rajan.
137. Shri M. Ghulam Ghouse.
138. Shri M. Jangamayya.
139. Shri M. Kabir Shah.
140. Shri M. Mallikarjunarao.
141. Shri M. Rustum Ali.
142. Shri M. Satyanarayana.
143. Shri M. Subbaraman.
144. Shri N. Balasubaramanian.
145. Shri N. Bhimasankaram.
146. Shri P. Rama Rao.
147. Shri R. Nagarajan.
148. Shri S. Balasubramaniam.
149. Shri S. Rajaratnam.
150. Shri S. V. Subba Rao.
151. Shri T. E. S. R. Lakshminarasimhan
152. Shri V. B. Ananda Sarma.
153. Shri V. Satyanarayana Rao.
154. Shri Y. Ramachandra Rao.

ASSAM

ASSISTANT COMMISSIONER

155. Shri S. C. Verma.

INCOME TAX OFFICERS

156. Shri K. P. Ghosh.
157. Shri S. K. Dey.

BIHAR & ORISSA

ASSISTANT COMMISSIONERS

- 158. Shri G. Ghosh.
- 159. Shri N. G. Das Gupta.
- 160. Shri R. N. Limaye.
- 161. Shri T. Bellan.

INCOME TAX OFFICERS

- 162. Shri D. Ghosh.
- 163. Shri D. N. Sahay.
- 164. Shri K. Singh.
- 165. Shri R. K. Ghosh.
- 166. Shri R. N. Dave.
- 167. Shri S. N. Achari.
- 168. Shri S. N. Chatterjee.
- 169. Shri S. R. Shukla.

BOMBAY

ASSISTANT COMMISSIONERS

- 170. Shri Avtar Singh.
- 171. Shri B. B. Palekar.
- 172. Shri C. G. Joshi.
- 173. Shri D. S. Bapat.
- 174. Shri G. S. Sampath.
- 175. Shri H. A. Shah.
- 176. Shri H. L. Bhatia.
- 177. Shri H. M. Jhala.
- 178. Shri H. P. Sharma.
- 179. Shri N. D. Sakhwalkar.
- 180. Shri R. N. Bose.
- 181. Shri H. D. Sinha.
- 182. Shri S. H. Bhat.
- 183. Shri T. R. Vishwanathan.
- 184. Shri V. S. Narayanan.

INCOME TAX OFFICERS

- 185. Shri A. B. Ramachandra Rao.
- 186. Shri A. V. Kasbekar.
- 187. Shri B. A. Menon.
- 188. Shri B. B. Khare.
- 189. Shri B. N. Galande.
- 190. Shri B. R. Samant.

191. Shri C. O. Soares.
192. Shri D. M. Deo.
193. Shri G. D. Gidwani.
194. Shri G. K. Dhule.
195. Shri H. D. Shukla.
196. Shri K. M. Mehta.
197. Shri M. G. Mahalye.
198. Shri M. M. Kurup.
199. Shri M. N. Deshmukh.
200. Shri M. P. Argikar.
201. Shri M. Ramalingam.
202. Shri M. R. Bastikar.
203. Shri N. Anantha Raman.
204. Shri N. A. Khan.
205. Shri P. G. Gandhi.
206. Shri P. J. Jacob.
207. Shri R. K. Bhalla.
208. Shri R. L. Butani.
209. Shri R. P. Patel.
210. Shri P. V. Godbole.
211. Shri R. S. Iyanger.
212. Shri S. A. Razvi.
213. Shri S. D. Jhala.
214. Shri S. D. Kulkarni.
215. Shri S. G. Raval.
216. Shri S. H. Sadar.
217. Shri S. H. Mirji.
218. Shri S. Habib Ahmed.
219. Shri S. S. Phadke.
220. Shri V. D. Deshpande.
221. Shri V. K. Pillai.
222. Shri V. M. Patwardhan.
223. Shri Y. S. Gaitonde.
224. Shri Y. P. Sud.
225. Shri Y. M. Pawar.

DELHI

INCOME TAX OFFICERS

226. Shri L. R. Vyas.

KERALA

INCOME TAX OFFICERS

- 227. Shri C. V. Natarajan.
- 228. Shri E. Hariharan.
- 229. Shri K. Abdul Hameed.
- 230. Shri K. A. Sankara Pillai.
- 231. Shri K. Venkataraman.

MADHYA PRADESH

ASSISTANT COMMISSIONERS

- 232. Shri G. R. Hegde.
- 233. Shri O. V. Kuruvilla.

INCOME TAX OFFICERS

- 234. Shri B. K. Srivastava.
- 235. Shri B. N. Rampal.
- 236. Shri D. C. Shukla.
- 237. Shri M. L. Choudhry.
- 238. Shri P. D. Pradhan.
- 239. Shri Prem Nath.
- 240. Shri R. R. Misra.
- 241. Shri S. P. Rao.

MADRAS

ASSISTANT COMMISSIONERS

- 242. Shri K. S. V. Raman.
- 243. Shri V. Ramaswamy Iyer.

INCOME TAX OFFICERS

- 244. Shri C. Mohammad Munshee.
- 245. Shri K. Poman.
- 246. Shri M. S. Krishnamachari.
- 247. Shri M. U. Reddi.
- 248. Shri S. Ramaswamy Iyer.
- 249. Shri S. Thiruvengadam.

MYSORE

ASSISTANT COMMISSIONERS

- 250. Shri A. Ram Mohan Rao.
- 251. Shri V. J. Karnik.

INCOME TAX OFFICERS

- 252. Shri A. G. Idnani.
- 253. Shri E. V. Rao Naidu.
- 254. Shri G. Ramanathan.
- 255. Shri H. Thimmaiah.
- 256. Shri M. Venkateshwarlu.
- 257. Shri R. Parameswara Iyer.
- 258. Shri S. Krishnamurti.
- 259. Shri U. N. N. Rao.

PUNJAB

ASSISTANT COMMISSIONERS

- 260. Shri C. P. Yadava.
- 261. Shri Hansraj Puri.

INCOME TAX OFFICERS

- 262. Shri Gulam Hassan.
- 263. Shri Gian Chand Samnotra.
- 264. Shri G. R. Bahmani.
- 265. Shri Harbans Singh.
- 266. Shri Jagjit Singh Dulat.
- 267. Shri J. S. Anand.
- 268. Shri R. D. Malhotra.
- 269. Shri P. K. Mitra.

UTTAR PRADESH

ASSISTANT COMMISSIONERS

- 270. Shri B. B. Nigam.
- 271. Shri J. C. Kalra.
- 272. Shri J. Sen.
- 273. Shri K. E. Johnson.
- 274. Shri P. C. Goyal.
- 275. Shri R. D. Kaushal.
- 276. Shri S. N. Roy.

INCOME TAX OFFICERS

- 277. Shri K. B. Bhatnagar.
- 278. Shri K. M. Chowdhry.
- 279. Shri M. S. Vishwan.
- 280. Shri M. M. Parshad.
- 281. Shri S. N. Singh.

WEST BENGAL

INCOME TAX OFFICERS

- 282. Shri A. C. Sen.
- 283. Shri A. N. Mehrotra.
- 284. Shri Bhim Sain.
- 285. Shri B. K. Choudhury.
- 286. Shri K. B. Narasimham.
- 287. Shri K. C. Sanyal.
- 288. Shri Rajendra Mohan.
- 289. Shri S. K. Banerjee.
- 290. Shri S. N. Mookerjea.

DEPARTMENTAL NON-GAZETTED OFFICERS

ANDHRA PRADESH

- 291. Shri B. Narayana Rao.
- 292. Shri G. Subrahmanyam.
- 293. Shri M. V. N. Raghavindra Rao.
- 294. Shri N. R. Gamji.
- 295. Shri S. Ramachandra Rao.
- 296. Shri V. Gopala Rao.
- 297. Shri V. Hanumantha Rao.

ASSAM

- 298. Shri Haripada Das.
- 299. Shri Umapada Ghosh.

BIHAR & ORISSA

- 300. Shri B. Prasad.
- 301. Shri R. N. P. Sinha.
- 302. Shri S. K. Mazumdar.

BOMBAY

- 303. Shri B. K. Vachhrajani.
- 304. Shri B. Ramani.
- 305. Shri D. C. Desai.
- 306. Shri D. D. Jalgaonkar.
- 307. Shri G. B. Daswani.
- 308. Shri G. J. Ajwani.
- 309. Shri G. S. Mahale.
- 310. Shri G. Satyanarayana.
- 311. Shri H. P. Gotekar.
- 312. Shri I. P. Desai.
- 313. Shri I. S. Vyas.

314. Shri J. G. Ladsaongikar.
315. Shri K. G. Asarkar.
316. Shri K. W. Gorhe.
317. Shri L. V. Lekhani.
318. Shri M. N. Desai.
319. Shri M. N. Deshmukh.
320. Shri M. N. Gade.
321. Shri M. N. Shah.
322. Shri M. P. Kulkarni.
323. Shri M. R. Joshi.
324. Shri M. V. Patankar.
325. Miss Manjrekar.
326. Shri N. K. Bam.
327. Shri P. S. Mahadevan.
328. Shri P. P. Samant.
329. Shri R. P. Sipahimalani.
330. Shri S. N. Nilangeker.
331. Shri S. M. Davda.
332. Shri S. Y. Patil.
333. Shri V. B. Mehta.
334. Shri V. B. Pandit.
335. Shri V. M. Bhave.
336. Shri V. R. Vishwasrao.

DELHI

337. Shri Lal Singh.
338. Shri M. N. Khanna.

KERALA

339. Shri M. Sadananda Prabhu.
340. Shri S. Rajagopalan.

MADHYA PRADESH

341. Shri B. V. Taose.
342. Shri K. N. Toorray.
343. Shri Prafulla Kumar.

MADRAS

344. Shri A. Sundran.
345. Shri K. S. Srinivasan.
346. Shri T. Shanmugham.

MYSORE

- 347. Shri B. S. Krishnamurthy.
- 348. Shri G. H. Padmarajaya.
- 349. Shri H. Chidambar. Jois.
- 350. Shri H. G. Korwar.
- 351. Shri J. Amaladas.
- 352. Shri K. P. Dhanwantraju.
- 353. Shri M. N. Ramakrishna Rao.
- 354. Shri S. R. Rao.
- 355. Shri Thomas David.
- 356. Shri Y. V. Venkateswara Rao.

PUNJAB

- 357. Shri Harbans Singh.
- 358. Shri Harbans Lal Sharda. & S. P. Goyal.
- 359. Shri R. S. Mohan.
- 360. Shri Radhey Sham.
- 361. Shri Shadi Lal Khanna.

UTTAR PRADESH

- 362. Shri A. H. Ansari.
- 363. Shri B. S. Chauhan.

WEST BENGAL

- 364. Shri A. K. Bagchi.
- 365. Shri A. K. Sen Gupta.
- 366. Shri A. K. Mukerjee.
- 367. Shri D. C. Dey.
- 368. Shri G. K. Nag.
- 369. Shri G. M. Hiranandani.
- 370. Shri J. Mazumdar
- 371. Shri Murari Mohan Panja.
- 372. Shri P. K. Bahadur.
- 373. Shri P. C. Gangopadhyay.
- 374. Shri Rabi Gopal Ghosh.
- 375. Shri Samir Baran Dewanjee.
- 376. Shri Sobabrata Saha.
- 377. Shri Sheo Narayan Tewary.
- 378. Shri Sital Prasad Sen.
- 379. Shri S. K. Bhattacharjee.
- 380. Shri Subimal Das.

APPENDIX III

QUESTIONNAIRE

PART I—ADMINISTRATION

1. Does the present organisational structure of the Department require any changes to enable it to discharge its functions efficiently under all the Direct Taxes Acts? What should be the set-up of the Department?

2. Do you consider that the present strength of the Department is adequate for the efficient administration of the Income-tax, Wealth-tax, Expenditure-tax, Gift-tax and Estate Duty Acts? What suggestions have you to offer in this regard?

3. What changes, if any, do you suggest in the functions and duties of the Inspecting Assistant Commissioner? Are you in favour of the Inspecting Assistant Commissioner being the assessing officer in the more important cases?

4. Do you favour the proposal that a Direct Taxes Advisory Committee should be formed at the Centre and in each State on the lines obtaining in some other Central Government Departments? What suggestions have you to offer with regard to the composition, powers and functions of such Committees?

5. Do you consider any changes necessary with regard to appearance of assesseees by authorised representatives under Sec. 61 of the Income-tax Act, and under the corresponding sections* of the other Direct Taxes Acts? If so, please give your proposals and, in particular, state whether—

(i) Income-tax Practitioners should be compulsorily registered with the Department; and

(ii) any restriction should be imposed on practice by persons who have retired or resigned from the Department.

6. It has been suggested that a provision on the lines of Section 13(3)** of the Income Tax Act, 1952 of the United Kingdom, be incor-

*(1) Section 44 of the Wealth-tax Act,

(2) Section 40 of the Expenditure-tax Act,

(3) Section 83 of the Estate Duty Act, and

(4) Section 43 of the Gift-tax Act.

**Section 13(3) of Income-tax Act, 1952 of the United Kingdom :—

“An inspector or surveyor who—

(a) wilfully makes a false and vexatious surcharge of tax; or

(b) wilfully delivers, or causes to be delivered, to the General Commissioners a false and vexatious certificate of surcharge, or a false and vexatious certificate of objection to any supplementary return in a case of surcharge; or

(c) knowingly or wilfully, through favour undercharges or omits to charge any person; or

(d) is guilty of any fraudulent, corrupt or illegal practices in the execution of his office, shall, for any such offence, incur a penalty of one hundred pounds, and on conviction shall be discharged from his office.”

porated in all the Direct Taxes Acts. What are your views in this regard?

7. What measures do you suggest to eliminate any possibility of malpractices, both on the part of the Government servants and the public?

PART II—ASSESSMENTS

8. What improvements do you consider necessary in the existing provisions relating to the method and procedure of assessments under the different Direct Taxes Acts, having special regard to the need for expediting disposal, reducing arrears, checking evasion of tax and mitigating inconvenience to the assessee?

9. Are there any unnecessary formalities prescribed in the law in regard to assessments which can be dispensed with without vitally affecting the assessment proceedings? If so, what are your suggestions?

10. Have you any suggestions to offer with a view to:—

- (i) adopting a simplified form of return for assessee in the small income group;
- (ii) simplifying and rationalising the forms of returns and notices; and
- (iii) enabling the assessee to furnish, by way of annexures to the returns, relevant information which will facilitate the acceptance of the returns by the assessing officers and obviate the need of calling for evidence later on for assessment purposes?

Wherever possible, specimen forms of returns, notices and annexures may please be given.

11. Do you feel that undue delay occurs in the course of assessment proceedings? If so, what, in your opinion, are the reasons for the delays and what remedies do you suggest to eliminate them?

12. Are any difficulties caused on account of varying interpretations of the provisions of the Direct Taxes Acts by different assessing officers and appellate authorities? What are your suggestions for avoiding these difficulties and ensuring uniformity of interpretation by the different authorities?

13. Have you experienced any difficulties in respect of direct taxes on account of factors like currency control, exchange restrictions, blocked credits and the insistence on the production of account books of foreign transactions? What remedies do you suggest in this regard?

14. Do you consider that it would facilitate expeditious disposal of, and secure uniformity in, assessments if cases are generally assigned to Income-tax Officers on the basis of business, profession or vocation? Are you in favour of modifying this system in respect of assessee carrying on multifarious business activities by assigning the whole group of related cases to the same Income-tax Officer?

15. What are your suggestions with regard to the modes and methods of work of the Income-tax Officers and their staff? Do you consider that the system of examination of accounts by the Income-tax Officer is preferable to examination by a separate Examiner of Accounts?

16. Do you advocate compulsory audit by Chartered Accountants in cases of business income or assets of value above a certain limit? If so,

- (i) what should be the limit; and

- (ii) what should be the nature of the certificate to be given by the Chartered Accountants?
17. It has been suggested that, in special circumstances, Government should have the right to appoint Chartered Accountants to audit the accounts of the assessee. What are your views on this proposal?
18. What suggestions have you to offer for simplifying the present methods of calculation of the various direct taxes?
19. Have you experienced any difficulties with regard to the working of the provisions relating to the allowances of depreciation and development rebate under the Income-tax Act? If so, what suggestions have you to offer for removing them?
20. Do you suggest any changes with regard to the existing provisions, and their application, in respect of allowance of bad debts under the various Direct Taxes Acts?
21. Have you experienced any administrative difficulties with regard to the assessments of Mutual Associations? If so, please give your suggestions in this matter.
22. It has been represented that considerable hardship is caused to assessee by the invoking of the proviso to Section 13 of the Income-tax Act in a large number of cases. What suggestions have you to offer in this matter having special regard to the necessity of maintaining proper accounts and assessing correct income? Would you, in this connection, desire particular criteria to be laid down for testing the correctness of the result shown in the books of accounts?
23. Do you consider that the scope of Section 18 of the Income-tax Act relating to deduction of tax at source should be enlarged so as to include classes of income or persons not at present covered by the said provisions? Have you any suggestions to offer in this regard? Can this system of deduction of tax at source be extended usefully to the Wealth-tax Act?
24. Have you any suggestions to make with regard to the scheme of advance payment of tax under Section 18A of the Income-tax Act? Do you favour the proposal that it should be made obligatory on the part of old assessee to pay their advance taxes without the Department being required to send notices under Section 18A of the Income-tax Act? Do you think that the scheme of rebate provided in Section 18 of the Gift-tax Act should be extended to other Direct Taxes Acts as well?
25. Do you favour the proposal to do away with the publication of the notice under Section 22(1) of the Income-tax Act? If so, what should be the time limit within which the returns should be submitted?
26. Do you approve of the proposal to discontinue the present practice of issuing notices under Section 22(2) of the Income-tax Act and, instead, make it compulsory for every assessee to file his return of income voluntarily within a specified time?
27. Do you approve of the suggestion that the following statements should be filed by assessee having large incomes as annexures to their returns of income:—
- (i) an income and expenditure account for each source of income other than business, profession or vocation; and

(ii) separate sworn affidavits vouching for the correctness of particulars and statements furnished?

28. Do you consider that assesseees having incomes above a specified limit, but not assessable to Wealth-tax, should be required to furnish statements of total wealth once in three years?

29. What are your views on the proposal that simultaneously with the filing of the return of income, wealth, expenditure, estate or gift, as the case may be, every assessee should be required to pay the amount of tax due thereon?

30. Do you recommend that assessing officers should, as far as possible, obtain the necessary information from the assesseees by correspondence or questionnaire so as to minimise the inconvenience caused to them by frequent attendance in the tax offices?

31. Have you experienced any difficulties with regard to the requirements made by assessing officers under Sections 22(4) and 23(2) of the Income-tax Act, and under the corresponding provisions* of the other Direct Taxes Acts? If so, what suggestions have you to offer to resolve them? In particular, do you desire that these notices should be dispensed with in the case of small assesseees?

32. What suggestions have you to offer with regard to assessments in the small income group? Do you think it feasible and advisable to have in such cases on the spot assessments?

33. Do you consider that in the small income cases agreed assessments should be made under which *ad hoc* lump-sums would be paid by assesseees without the formality of a regular assessment order and without the right of appeal?

34. What are the administrative difficulties you have experienced in the operation of Section 23A of the Income-tax Act? What measures do you suggest for removing them?

35. What are the administrative difficulties you have experienced in respect of the treatment of speculation losses and hedging transactions under the Income-tax Act? What suggestions have you to offer to resolve the same?

36. Do you suggest any changes in the existing provisions of the Income-tax Act relating to the registration of firms and renewals thereof?

37. Do you approve of the suggestion that Inspecting Assistant Commissioners should be statutorily required to give a hearing to assesseees before approving Income-tax Officers' proposals under Section 28(6) of the Income-tax Act, and under the corresponding provisions** of the other Direct Taxes Acts?

*(1) Sections 16(2) and 16(4) of the Wealth-tax Act.

(2) Sections 15(2) and 15(4) of the Expenditure-tax Act, and

(3) Sections 15(2) and 15(4) of the Gift-tax Act.

** (1) section 18(4) of the Wealth, tax Act.

(2) Section 17(4) of the Expenditure-tax Act, and

(3) Section 17(4) of the Gift-tax Act.

38. It has been represented that delays occur in furnishing copies of assessment orders to assessees. Should there be a statutory provision in all the Direct Taxes Acts requiring the assessing officer to send a copy of the assessment order along with the notice of demand?

39. Have you experienced any difficulty with regard to the re-opening of assessments under Section 34 of the Income-tax Act? If so, please give your suggestions, having regard to the need for effectively checking deliberate attempts at concealment of income.

40. Do the provisions of the Income-tax Act relating to the taxability of non-residents through their business connections in India affect adversely the interests of persons engaged in foreign trade? If so, what modifications would you suggest in the provisions of Sections 42 and 43 of the Income-tax Act?

41. Do the present provisions of Section 64 of the Income-tax Act relating to the place of assessment cause any difficulties? If so, have you any suggestions for removing them?

PART III—REFUNDS

42. What improvements do you suggest in the present procedure relating to refund cases, having regard to the necessity for eliminating delays in disposal and avoiding inconvenience to the assessees?

43. Do you advocate the grant of interest at a prescribed rate on refunds delayed beyond a specified period?

44. Do you experience any difficulties in the encashment of refund orders? If so, what suggestions have you to offer to remove them?

45. It has been suggested that the rates of income-tax in the case of limited companies should be reduced, and, simultaneously, the present practice of granting refund of tax deemed to have been paid by the shareholder on the dividends should be done away with. What are your views on this proposal? What are your suggestions for simplifying the present form of dividend warrant certificate and the method of grossing up of dividends?

46. What suggestions have you to offer for eliminating delays and difficulties in finalising the claims of Double Income-tax Relief and in implementing provisions of the Double Income-tax Avoidance Agreements? Do you think that the time limit for filing the claim for Double Income-tax Relief under the existing provisions needs any extension? Have you any suggestions to offer with regard to the Double Taxation Avoidance Agreements concluded under Section 30 of the Estate Duty Act?

PART IV—APPEALS

47. What suggestions have you to offer in respect of the appellate machinery, having special regard to:—

- (i) avoiding delays;
- (ii) redressing the grievances of assessees adequately; and
- (iii) modifying the existing appellate stages?

48. Do you suggest any modifications in the present composition, powers and functioning of the Income-tax Appellate Tribunal? Should the Tribunal be vested with the powers of enhancement in the same manner as the Appellate Assistant Commissioners have at present?

49. It has been suggested that the Appellate Assistant Commissioners should be placed under the administrative control of the Ministry of Law. What are your views on this proposal?

50. It has been suggested that there should be Panels of Advisers drawn from the public to assist the appellate authorities in the disposal of appeals in specified cases. If you favour the above proposal, please give your views regarding the composition and powers of such panels.

51. Do you approve of the proposal to make orders passed under Section 35 of the Income-tax Act, and under the corresponding sections* of the other Direct Taxes Acts, appealable to the Appellate Assistant Commissioner? Have you any suggestions to offer with regard to such extension of appeal rights of assesseees in respect of any other orders or directions of the assessing officers?

52. Do you consider that the right of appeal should be restricted in cases where a person has not filed his return or has failed to comply with the statutory notices?

53. What suggestions have you to offer on the proposal that no appeal should lie to the Appellate Tribunal against the order of the Appellate Assistant Commissioner in respect of cases with income below Rs. 15,000 or those in which the disputed income is less than Rs. 5,000? Do you think that this principle should be extended to the other Direct Taxes Acts?

54. In order to obviate multiplicity of appeal proceedings, do you agree that the first appeal in respect of matters such as registration of firms, partitioning of Hindu Undivided Families, discontinuance of business, status and residence should lie directly to the Appellate Tribunal?

55. What are your views with regard to the adducing of evidence before the assessing and appellate authorities? Do you agree that no opportunity should be given to adduce evidence at the appellate stage to those assesseees who have failed to produce the same without sufficient cause at the assessment stage?

56. Do you consider it feasible that a time limit should be fixed for the hearing and disposal of appeals both before the Appellate Assistant Commissioners and the Appellate Tribunal? If so, what should be such time limit and what provisions should be made in respect of cases which are not disposed of within the time limit?

57. It has been represented that considerable hardship is caused to assesseees on account of tax demands which are in dispute pending appeal

*(1) Section 35 of the Wealth-tax Act,

(2) Section 31 of the Expenditure-tax Act,

(3) Section 62 of the Estate Duty Act, and

(4) Section 34 of the Gift-tax Act.

decisions. Are you in favour of time being allowed statutorily for payment of tax in all cases of disputed assessments? If so, what safeguards would you suggest to ensure that frivolous appeals are not filed with a view to merely obtaining time for payment of tax and that the assets are not alienated in the meantime?

58. Are there any undue delays in the grant of the refunds arising out of appellate orders? Would you advocate payment of interest at a prescribed rate if the issue of the refund order is delayed by the Department beyond a specified time limit?

59. Do you approve that the Department should be empowered to withhold refunds of taxes consequent to decisions of Appellate Assistant Commissioners and the Appellate Tribunal under provisions analogous to Section 66(7) of the Income-tax Act? If so, what suggestions have you to offer in this matter?

60. It has been represented that costs should be awarded to the successful party in appeal proceedings as obtaining in Civil Courts. What suggestions have you to offer in this regard? Do you consider that this procedure should be restricted only to the appeals before the Tribunal?

61. Do you suggest any changes in respect of the present provisions regarding the Commissioners' powers of revision? In Particular, do you suggest that a hearing should be given by the Commissioner before passing final orders in all cases falling under Section 33A(2) of the Income-tax Act, and under the corresponding sections* of the other Direct Taxes Acts?

PART V—COLLECTION AND RECOVERY OF TAXES

62. Do you consider the present provisions and machinery for the recovery of direct taxes to be adequate? If not, what suggestions have you to offer?

63. It has been represented that recovery of demands resulting from arbitrarily heavy assessments causes considerable hardship to the assessee concerned. What measures do you suggest for removing the same?

64. Do you favour the proposal to grant a rebate to assessee with a view to encouraging the prompt payment of taxes?

65. Should interest at a prescribed rate be levied for any delay in, or time allowed for, payment of tax after the due date?

66. Do you consider that tax demands should get priority for payment over all other unsecured debts, the priority being effective from the first day of the relevant assessment year irrespective of the actual date of assessment and demand?

67. What are your views regarding the proposal that directors of all limited companies as well as shareholders of private limited companies should be made jointly and severally liable for taxes due from companies even after their going into liquidation or otherwise being wound up?

*(1) Section 25(1) of the Wealth-tax Act,

(2) Section 23(1) of the Expenditure-tax Act, and

(3) Section 24(1) of the Gift-tax Act.

68. Do you favour the proposal that recovery of unrealised tax of any partner of a registered firm should be statutorily effected from the firm as such or from other partners?

69. Do you favour the modification of the present provisions for recovery of income-tax with a view to enabling the Department to recover taxes due from an assessee by sale of assets, income from which is aggregated under Section 16(3) of the Income-tax Act? Do you consider that similar modifications are necessary in the other Direct Taxes Acts?

70. Do you think it will be conducive to expeditious collection of tax, if Government were to give periodically wide publicity to the names of defaulting tax payers?

71. Do you experience any difficulty in the payment of tax into the Government Treasuries? If so, what suggestions have you to offer to remove them? Are you in favour of the Department opening cash counters in Income-tax Offices for collecting the tax dues, particularly of small amounts?

72. What are your views on the suggestion that the assessing officers should be divested of their responsibility for collection of taxes which work should be entrusted to wholetime recovery officers?

73. Do you approve of the suggestion that the direct taxes should be recovered under a self-contained Central Revenue Recovery Code instead of under the varying systems of State Revenue Recovery Laws, Municipal Acts and the Code of Civil Procedure?

PART VI—TAX EVASION

74. What, in your opinion, is the extent of evasion of direct taxes in this country? What are the contributory causes for the same, and what measures do you suggest to eliminate evasion in cases of:—

- (i) small income group;
- (ii) middle income group; and
- (iii) large income group?

75. Do you consider that the Department is adequately equipped for checking tax evasion? What suggestions have you to offer for improving the organisation and procedures of the Department?

76. What are your views on the proposal that a Board of Specialists should be constituted to assist in checking evasion? What should be the composition and powers of such a body?

77. Do you consider that the powers of search and seizure as provided for under Section 37 of the Income-tax Act are adequate for checking tax evasion? Have you experienced any difficulties in the working of these provisions? What modifications do you suggest?

78. Are you in favour of having an organisation like the Income-tax Investigation Commission as a permanent feature of the direct taxes administration to deal with cases of substantial concealment of income, wealth, expenditure, gift or estate? If so, what should be the composition, powers and functions of such an organisation?

79. What measures would you suggest for settlement of cases of tax evaders who come forward with voluntary or quasi-voluntary disclosures? Do you consider whether:—

- (i) a scheme for accepting voluntary disclosures of concealed income, etc. should be incorporated in the statute; or in the alternative,
- (ii) such cases of disclosures be considered for settlement on merits?

In either case, please state whether the disclosure should be settled by the departmental authorities or by an independent high-powered board.

80. What are your views with regard to the following suggestions:—

- (i) that, in special circumstances or where manipulation of accounts is suspected, Income-tax Officers should be empowered to check current account books during the accounting year itself;
- (ii) that, in specified categories of cases, assessees should be required to write their accounts in books previously stamped and signed by the officials of the Department and the books should be made available to them, when required, for inspection during the accounting year itself;
- (iii) that assessees should be required statutorily to close the books of account within a specified period from the end of the accounting period, and to produce them immediately thereafter before the officials of the Department for being signed and stamped; and
- (iv) that assessees having business income or turnover above a certain limit should be statutorily required to maintain closed and adjusted accounts on the mercantile basis?

81. Do you think that there should be a statutory obligation requiring the furnishing of the following information to the Department:—

- (i) names and addresses of persons making deposits of all descriptions, above a particular limit, by banks and shroffs; and
- (ii) names and addresses of all persons taking life or general insurance policies above a specified limit, by the Life Insurance Corporation and insurance companies?

82. Do you consider that the issue of cash memos giving the names and addresses of the purchasers should be made statutorily compulsory for transactions above a specified amount? If so, what suggestions have you to offer in the matter?

83. Do you approve that there should be a statutory provision requiring that payments above a specified amount (say, Rs. 10,000) should be made only by crossed cheques? If so, how can attempts to get over this provision by barter transactions or splitting up of the amounts in question be checked?

84. Do you favour the proposal that disbursing authorities should deduct, by way of tax at source, a percentage of payments made to contractors, and that they should also insist on production of tax clearance

certificates before making final adjustments of accounts? What suggestions have you to offer in this regard?

85. Do you approve of the suggestion that there should be no registration of transfer of a property above a specified value without the production of a tax clearance certificate from the Income-tax Officer?

86. It has been suggested that government contracts, licences, etc. should not be granted to those who evade taxes or are in default. What are your views in this matter?

87. What suggestions have you to offer with regard to the proposal of making *benami* transactions illegal? Should not the system of holding shares on blank transfers for indefinitely long period be done away with?

88. Do you consider that the maximum quantum of penalty leviable under Section 28 of the Income-tax Act, and under the corresponding provisions* of the other Direct Taxes Acts, should be increased to three times the tax sought to be evaded?

89. With regard to the levy of penalties, do you favour the proposals that:—

(i) the burden of proof should be statutorily fixed on the assessee; and

(ii) a time limit should be prescribed for completion of penalty proceedings?

90. Do you consider that the penal provisions of Sections 51 and 52 of the Income-tax Act, and of the corresponding provisions** of the other Direct Taxes Acts, should be tightened up? Do you agree that deliberate concealment of income, wealth, expenditure, gift or estate should be made a criminal offence punishable with imprisonment of a deterrent nature?

91. Do you consider that abetment in the submission of incorrect return of income, wealth, expenditure, gift or estate should be made an offence punishable with a specified fine as in Section 48(2)† of Income Tax Act, 1952 of the United Kingdom?

*(1) Section 18 of the Wealth-tax Act,

(2) Section 17 of the Expenditure-tax Act,

(3) Section 56 of the Estate Duty Act, and

(4) Section 17 of the Gift-tax Act.

** (1) Section 36 of the Wealth-tax Act,

(2) Section 32 of the Expenditure-tax Act, and

(3) Section 35 of the Gift-tax Act.

† Section 48(2) of the Income Tax Act, 1952 of the United Kingdom.

“A person who knowingly and wilfully aids, abets, assists, incites or induces another person to make or deliver a false or fraudulent account, statement, or declaration, of or concerning any profits or gains chargeable, or the yearly rent or value of any lands, tenements, hereditaments or heritages, or any matters affecting any such rent or value, shall for every such offence forfeit the sum of five hundred pounds.”

92. Do you consider that the following measures will assist in reducing the extent of evasion:—

- (i) modifying the present provisions of Section 54 of the Income-tax Act, and of the corresponding sections* of the other Direct Taxes Acts, so as to enlarge the scope of disclosure of information by the Department; and
- (ii) publication of names of persons who are penalised for concealment of income, wealth, expenditure, gift or estate?

If you agree with these respective suggestions, please indicate the extent to which such further disclosure may be permitted and the categories of persons in respect of whom such a publication may be made.

93. How can better co-operation between the Income-tax Department and the Sales Tax, Customs and Central Excise Departments etc., be secured with a view to catching tax evaders?

94. It has been suggested that an automatic reporting system should be introduced under which all capital transactions above a specified limit are regulated *inter alia* through the assignment of code numbers registered with the Department. Do you think that such a system will be feasible and will enable evasion to be checked without causing much inconvenience to the public?

95. Is it advisable that the Department should encourage genuine informers and give larger rewards to them for information given in respect of tax evasion? If so, what safeguards would you suggest to avoid black-mail? Should any punishment or other penalty be prescribed for the furnishing of false information?

96. Have you any suggestions to offer to rouse public conscience against tax evasion? Do you consider that the voluntary association of the public on a large scale is feasible for detecting cases of tax evasion? If so, in what manner should public co-operation be availed of?

97. Are there any loopholes in the existing taxation laws which facilitate avoidance of tax? If so, please enumerate them and give specific suggestions for plugging such loopholes.

PART VII—PUBLIC RELATIONS

98. Have you any suggestions to offer for improving the relations between the public and the Department and ensuring maximum co-operation between them? Do you think that the institution of Public Relation Officers has proved useful? In what manner can their functions be improved and enlarged?

99. Do you consider that the steps taken by the Department in making the public aware of their rights and obligations in regard to tax matters are adequate? Have you any suggestions to offer for improving publicity by the Department and the publication and distribution of tax literature?

100. What measures are necessary for ensuring that assesseees or their representatives do not have to wait in the tax offices for unduly long periods?

*(1) Section 42 of the Wealth-tax Act,

(2) Section 38 of the Expenditure-tax Act,

(3) Section 80 of the Estate Duty Act, and

(4) Section 41 of the Gift-tax Act.

101. It has been represented that considerable hardship is caused to the public in obtaining tax clearance and verification certificates. What suggestions have you to offer in this regard?

102. Do you think that the facilities and amenities available in the tax offices for the public are adequate? If not, what suggestions have you to offer in this regard?

PART VIII—INTEGRATED TAX STRUCTURE

103. Do you consider the present structure of direct taxation to be completely integrated? If not, what changes do you suggest to make it more effective in checking tax evasion and, at the same time, minimising the hardship that may be caused to taxpayers?

104. Is it desirable to have an integrated tax code for all the direct taxes even though every income-tax payer may not be liable to pay wealth-tax, expenditure-tax or gift-tax? Do you think that such an integrated tax code will do away with duplication of work and facilitate direct tax proceedings?

105. With a view to achieving the basic purpose of the integrated system of taxation and having regard to the need for specialisation in assessments as well as avoiding inconvenience to assesseees, which of the following alternatives would you prefer, viz.

- (i) the same assessing officer dealing simultaneously with all the assessments of a person under the various Direct Taxes Acts except under the Estate Duty Act, or
- (ii) separate assessing officers for income-tax, wealth-tax, expenditure-tax and gift-tax cases as obtaining at present with regard to estate duty?

106. What is your reaction to the suggestion that provision should be made in the Wealth-tax, Expenditure-tax and Gift-tax Acts for advance payments of tax and provisional assessments, as in the Income-tax Act?

107. Do you approve of the proposal that, as in the United Kingdom, there should be a Central Valuation Department attached to the office of the Central Board of Revenue with branch offices in different States for valuing immovable properties, shares, managing agency rights, etc. for the purposes of assessments under the Income-tax, Estate Duty, Wealth-tax and Gift-tax Acts? Have you any suggestions to offer in respect of the existing provisions for appointment of valuers?

108. What suggestions have you to offer with regard to the provisions relating to the procedures under, and the actual working of, the Wealth-tax Act? Have you experienced any difficulties in respect of the inclusion and valuation of the different assets in the computation of net wealth? If so, please enumerate them and give your views in the matter.

109. What are your views in respect of the procedures obtaining under the Expenditure-tax Act? Do you suggest any changes in the expenditure-tax return form having regard to the need for getting full particulars of exempted categories of expenditure, for checking evasion and for eliminating the inconvenience caused to assesseees by calling for information piece-meal? What suggestions have you to offer in this regard?

110. Have you experienced any difficulties in respect of the assessment, appeal and recovery procedures under the Estate Duty Act? If so, please give your suggestions having special regard to the inclusion and valuation of the different assets.

111. Are the existing provisions of the Gift-tax Act adequate to check avoidance of estate duty and other direct taxes? Do you suggest any modifications in the procedures obtaining under this Act?

PART IX—GENERAL

112. Have you any other suggestions to offer on points not covered by the above questions with a view to reorganising the present administrative structure of the Department and simplifying the existing procedures for implementing the integrated scheme of direct taxation, with due regard to the need for eliminating tax evasion and avoiding inconvenience to the assesseees?

[Extract from the Note attached to the Questionnaire:—The questionnaire should not be taken to reflect in any manner the opinion of the Committee in respect of matters contained therein.

2. Except where a specific reference is made to any particular Act, it should be taken that the questions refer to all the Direct Taxes Acts, namely, Income-tax, Wealth-tax, Expenditure-tax, Gift-tax and Estate Duty Acts.

SUPPLEMENTARY QUESTIONNAIRE

(For the Department only)

PART I—ADMINISTRATION

113. What suggestions have you to offer with regard to the present system of recruitment and training of the gazetted and non-gazetted staff of the Department?

114. Do you consider it necessary to decentralise the present set-up of the Department by delegating more powers to the subordinate gazetted and non-gazetted staff? If so, what suggestions have you to offer with special regard to eliminating delays in assessment and other proceedings and removing inconvenience to the assesseees?

115. Is it necessary, in your opinion, to have a separate cadre of Examiner of Accounts for scrutinising the returns and statements filed and for examining the books of accounts produced in the course of the assessment proceedings? If so,

(i) do you favour the formation of an Examiners Branch in important cities and towns under the supervision of a Chief Examiner; and

(ii) what should be the qualifications for recruitment to, and the scales of pay for, this cadre?

116. Do you consider any changes necessary in the present gradation of the gazetted and non-gazetted staff of the Department? What suggestions have you to offer with regard to the strength, scales of pay, distribution of work, duties and conditions of service in respect of each grade?

117. It has been urged that the present work-load of the Department is abnormally heavy. Do you agree with the view? What, in your opinion, should be the fair work-load on each grade of the gazetted and non-gazetted staff?

118. Do you suggest any changes in the present method of evaluation of, and control over, the work of each grade of gazetted and non-gazetted staff?

119. Have you any suggestions to offer regarding the present system of inspection of an Income-tax Officer's work by the Inspecting Assistant Commissioner? Do you agree with the proposal that inspection should be conducted by a central organisation?

120. What are your views with regard to the organisation and working of the different Directorates and of the Central Commissioners' charges?

121. With a view to improving the quality of assessments in the more important cases, do you approve of the suggestion that certain Assistant Commissioners should be made assessing officers for such cases?

122. What is your opinion regarding the working of group Assistant Commissioners' charges? Do you favour an extension of this scheme to all city circles?

123. Do you think that, in order to minimise evasion and avoidance of tax, to expedite assessments and to improve the recovery machinery, there is a case for conferring larger powers on the Department, and, in particular, on Income-tax Officers, Examiners and Inspectors?

124. What are the contributory causes for the upward trend, noticed in the recent years, in the percentage of the cost of collection to the revenues realised? What views have you to offer in this regard?

125. Are the present arrangements for the printing and supply of forms and stationery adequate? What measures do you suggest for ensuring their timely and adequate supply? Should the Department have its own printing press and stationery depots? What additional powers should be conferred on the Commissioners for this purpose?

126. It has been suggested that there should be a separate Directorate of Statistics and Research attached to the Central Board of Revenue. What are your views on the subject?

127. What suggestions have you to offer in respect of—

- (i) maintenance and preservation of records and registers;
- (ii) compilation of statistics; and
- (iii) submission of periodical reports and returns?

128. What are the difficulties experienced regarding conveyance etc. in the conduct of survey and enquiry work? Have you any suggestions to offer in this respect?

129. What are your views in the matter of transfers of the gazetted and non-gazetted staff, having regard to the following:—

- (i) possessing knowledge of regional languages necessary for scrutinising books of accounts and documents;
- (ii) minimising chances of corruption or favouritism as a result of continuous personal contacts;
- (iii) gaining experience in handling different types of cases;

- (iv) maintaining continuity in handling particular cases and type of work, and reducing the number of fully or partly heard cases remaining to be disposed of;
- (v) alleviating the hardship caused in the matter of housing, education and maintenance of family etc; and
- (vi) keeping in view the need for providing equal opportunities for all to work in the cities as well as mofussil stations?

130. With a view to having better relations and co-operation between gazetted and non-gazetted staff, do you favour the introduction of the system of 'Whitley Councils' as obtaining in the United Kingdom? What suggestions have you to offer to infuse a greater sense of responsibility and discipline amongst the staff?

PART II—ASSESSMENTS

131. It has been represented that the present quotas for disposal of assessments and fixation of budget targets for Income-tax Officers adversely affect the quality of assessments and cause harassment to assessees. What are your views in this regard, bearing in mind the need for some measure of control over assessment and collection work?

132. In view of the fact that the audit parties have discovered large mistakes in calculations of taxes, what measures do you suggest to ensure proper tax computation? Do you favour the establishment of an internal audit unit on a permanent footing?

133. In the interest of speedy disposal and greater efficiency, do you suggest that Income-tax Officers should be equipped with calculating machines and other modern office appliances?

PART III—REFUNDS

134. Are you in favour of introducing the system of disposal of refund applications on the very day of receipt as obtaining at Ahmedabad and Calcutta?

PART IV—APPEALS

135. There is a feeling that the Department is not adequately equipped for defending its cases before the Tribunal and courts of law. What measures do you suggest in this regard?

136. With a view to having better representation of the Department's case, do you approve of the proposal that certain posts of Authorised Representatives be manned by Assistant Commissioners of Income-tax?

PART V—COLLECTION AND RECOVERY OF TAXES

137. The taxes in arrears have increased considerably in recent years, and on 1st April 1958 they amounted to Rs. 287.32 crores. What are the factors responsible for these huge arrears and what practical measures do you suggest for reducing them?

138. Do you think that the Government should be empowered to scale down tax demands when it is satisfied that they are either excessive or beyond the financial capacity of the assessee concerned? If so, what should be the agency for this purpose?

PART VI—TAX EVASION

139. With a view to having a more effective check on tax evasion, what suggestions have you to offer in respect of—

- (i) organisation;
- (ii) strength and qualifications of personnel; and
- (iii) methods and plan of work.

140. Do you favour the constitution of a Special Investigation and Enforcement Section in each Commissioner's charge, manned by specially trained personnel for—

- (i) carrying out the work at present done by the Special Investigation Branch, but on an extended scale; and
- (ii) effecting raids, searches, and seizures under Section 37(2) of the Income-tax Act?

If so, what suggestions have you to offer in this matter?

141. Are the existing agencies for collection, collation and dissemination of information in respect of assessee's adequate? What additional or alternative arrangements have you to suggest?

142. Do you consider that assistance of municipalities, local bodies, universities and sister government departments in making special surveys and reports on economic and trade conditions as well as in collecting other relevant information from them by a proper liaison will help the Department in effectively checking evasion? If so, how can such assistance be obtained?

PART VII—PUBLIC RELATIONS

143. What suggestions have you to offer with regard to the proposal to constitute a Central Board of Enquiry to inquire into and give findings on complaints by assessee's of harassment? What should be the composition and powers of such a Board?

PART VIII—INTEGRATED TAX STRUCTURE

144. What are the difficulties experienced in the actual administration of the various Direct Taxes Acts, and what suggestions have you to offer to remove them?

APPENDIX IV

LIST OF PERSONS WHO SENT REPLIES TO THE QUESTIONNAIRES DATED 30TH
AUGUST, 1958 ISSUED BY THE COMMITTEE.

I—STATE GOVERNMENTS :

S. No.

1. Government of Orissa.
2. Government of Uttar Pradesh.
3. Government of West Bengal.

II—PUBLIC :

(A) CHAMBERS AND OTHER ORGANISATIONS :

ANDHRA PRADESH :

S. No.	Name of the Organisation.	Address.
4.	The Indian Chamber of Commerce,	P B. No. 67, Guntur.
5.	Andhra Pradesh Grain & Seed Merchants' Association,	Pahade Niwas, Osmangunj, Hyderabad.
6.	Administrative Staff College,	Bella Vista, Hyderabad.
7.	Income-tax and Sales Tax Practitioners' Association,	Abid Road, Hyderabad.
8.	Jewellers' Association,	Anantapur.
9.	Madras Mica Association,	Gudur, Nellore.
10.	The Merchants' Association,	Anantapur.
11.	The Society of Income-tax Practitioners (Regd),	Vijayawada.
12.	The Tenali Wholesale Kirana Merchants' Association,	Tenali, Guntur.

ASSAM :

13.	Assam Federated Chamber of Commerce,	Gauhati.
14.	The Income-tax Bar Association,	Income-tax Building, Gauhati.
15.	The Upper Assam Chamber of Commerce,	Jorhat.

S. No.	Name of Organisation	Address
BIHAR		
16.	Bihar Chamber of Commerce,	Judges' Court Road, Patna.
BOMBAY		
17.	Association of Merchants & Manufacturers of Textile Stores & Machinery	Sir Vithaldas Chambers, 16, Apollo Street, Bombay-1.
18.	All India Radio Merchants' Association,	Fateh Manzil, Opera House, Bombay-4.
19.	All India Importers and Exporters Association,	Church Gate House, Fort, Bombay-1.
20.	Bombay Industries' Association,	C/o M/s Kamani Metals & Alloys Ltd., Agra Road, Bombay-37.
21.	Bombay Shareholders' Association,	Dalal Street, Fort Bombay.
22.	Bombay Oil Seeds & Oil Exchange Ltd.,	Bombay.
23.	Bombay Shroffs' Association,	233-A, Shroff Bazar, Bombay-2.
24.	Bombay Piecegoods Merchants' Association,	Mulji Jetha Market, Hall, 250 Shaikh Memon Street, Bombay-2.
25.	Bombay Legal Aid Society,	Hamam House, Hamam Street, Fort, Bombay-1.
26.	Bombay Chartered Accountants' Society,	60, Forbes Street, Fort, Bombay-1.
27.	Bombay Incorporated Law Society,	113, Mahatma Gandhi Road, Bombay-1.
28.	Cinematograph Exhibitors' Association of India,	Vallabhbhai Patel Road, Bombay-4.
29.	Chartered Accountants' Association,	Bombay Mutual Building, Relief Road, Ahmedabad.
30.	Commerce Graduates' Association,	Wadia Building, Bombay-1.
31.	Federation of Electricity Undertaking of India,	Bombay.
32.	Federation of Gujarat Mills & Industries,	Baroda-1.
33.	Gujarat Chamber of Commerce,	Khanpur, P. O Box No 162, Ahmedabad-1.
34.	Grain & Oilseeds Merchants' Association,	Bombay.
35.	House Owners' Association,	Shukarwar, Poona-2.
36.	Hindustani Merchants' & Commission Agents' Association Ltd.,	342, Kalbadevi Road, Bombay.
37.	Indian Banks' Association,	17, Elphinstone Circle, Fort, Bombay.
38.	Indian Cotton Mills' Federation,	P.B No., 95, Bombay-1.
39.	Indian Motion Picture Producers Association,	Vallabhbhai Patel Road, Bombay-4.

S. No.	Name of the Organisation	Address
40.	Indian National Steam Ship Owners' Association,	Scindia House, Ballard Estate, Bombay.
41.	Indian Merchants' Chamber,	76, Veer Nariman Road, Church Gate, Bombay.
42.	Income-tax Practitioners' Association,	Toll Naka, Vadaj, Ahmedabad.
43.	Mahratta Chamber of Commerce & Industry,	Tilak Road, Poona—2.
44.	Mineral Industry Association,	Mineral House, Nagpur—1.
45.	Nag Vidhrabha Chamber of Commerce,	Nagpur.
46.	Nawanagar Chamber of Commerce,	Chamber Hall, Jamnagar.
47.	Native Stock & Share Brokers' Association,	Fort, Bombay.
48.	Poona Merchants' Chamber,	185, Bhawani Path, Poona—2.
49.	Rajkot Chamber of Taxation Experts,	Para Bazar, Rajkot.
50.	Surat Chamber of Commerce,	Surat.
51.	The Textile Mills' Association,	P.B. No. 3, Nagpur.
52.	Taxpayers' Association of India Ltd.,	Hamam Street, Bombay.
53.	Taxation Bureau,	Noble Chambers, 3rd Floor, Fort, Bombay—1.

DELHI :

54.	Federation of Indian Chambers of Commerce & Industry,	New Delhi.
55.	Delhi Factory Owners' Federation,,	Scindia House, Curzon Road New Delhi.
56.	The Institute of Chartered Accountants of India,	Mathura Road, New Delhi.
57.	Motion Pictures' Association,	52/55 Mangal Market, Chandni Chowk, Delhi.
58.	The Punjab & Delhi Chamber of Commerce,	Scindia House, P.B. No. 130 New Delhi.

KERALA :

59.	Alleppey Oil Mills & Merchants' Association,	Alleppey.
60.	Chamber of Commerce,	Trichur.
61.	Chamber of Commerce,	Chalai, Trivandrum.
62.	Ernakulam Chamber of Commerce,	Ernakulam.
63.	Hosdrug Taluk Merchants' Association.	Khanhangad

S. No.	Name of the Organisation	Address
MADHYA—PRADESH :		
64.	Madhya Pradesh Chamber of Commerce & Industry,	Lashkar, Gwalior.
65.	Madhya Pradesh Millowners' Association,	Indore.
66.	Mahakoshal Chamber of Commerce,	Jwaharganj, Jabalpur.
MADRAS :		
67.	Auditors' Association of Southern India,	98, Sastri Road, Coimbatore.
68.	Coimbatore Cloth Merchants' Association,	Coimbatore.
69.	Hindustan Chamber of Commerce,	168, Broadway, Madras-1.
70.	Madras Traders' Association,	Spencers' Building, Mount Road, Madras.
71.	Madura Ramnad Chamber of Commerce,	90-92, East Avanimoola Street, Madurai.
72.	Madras State Handloom Industry & Trade Association,	65—Armenian Street, Madras-1.
73.	Madras Mica Association,	Gudur, Nellore.
74.	Madras Stock Exchange Ltd,	322/323 Linghi Chetty Street, Madras.
75.	Research Institute,	5, Mulla Sahib Lane, Madras.
76.	Southern India Chamber of Commerce,	Indian Chamber Buildings, P.B. No. 1208, Madras—1.
77.	Society of Auditors,	292, Esplanade Road, Madras.
78.	Tamil Chamber of Commerce,	310/311 Linghi Chetty Street, P.B. No. 1661, Madras—1.
79.	United Planter's Association of Southern India,	P.B. No. 11, Coonoor.
80.	Virudhunagar Chamber of Commerce,	Virudhunagar.
MYSORE :		
81.	Mysore Chamber of Commerce,	Kembegowda Road, Bangalore-9.
82.	Mysore State Chartered Accountants' Association.	126-127, Raja Market, Avenue Road, Bangalore-2.
83.	Mangalore Cashew Mfr., Association,	Bangalore.
ORISSA :		
84.	Berhampur Chamber of Commerce,	Berhampur.
85.	Income-tax Bar Association,	Berhampur, Ganjam.

S. No.	Name of the Organisation	Address
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PUNJAB :

86. Bhiwani Traders' Association Ltd., Bhiwani.
 87. Textile Manufacturers' Association, P.B. No. 79, Amritsar.

RAJASTHAN :

88. Chamber of Commerce & Industry, Bharatpur.
 89. Jaipur Chamber of Commerce & Industry, Johari Bazar, Jaipur City.

UTTAR—PRADESH :

90. Kanpur Sugar Marchants' Association, 51/57, Collector Ganj, Kanpur.
 91. Income-tax Practitioners' Association, Agra.
 92. Income-tax Bar Association, Varanasi.
 93. Lucknow Merchants' Association, Aminabad, Lucknow.
 94. Lucknow Iron & Hardware and Paint Merchants' Association, 24, Sri Ram Road, Lucknow.
 95. Merchants' Chamber of U.P., 51/57, Civil Lines, Kanpur.
 96. Northern India Mercantile Chamber of Commerce, 100, Carlton Hotel, Lucknow.
 97. National Chamber of Industries and Commerce, G.G. Industries, Post Office, Agra.
 98. Registered Kanpur Kapra Committee, Kanpur.
 99. Uttar Pradesh Kardata Sangh (Regd) 49/56, Nayaganj, Kanpur.

WEST BENGAL :

100. Associated Chambers of Commerce of India, Royal Exchange, Calcutta—1.
 101. Bengal National Chamber of Commerce & Industry, Calcutta.
 102. Bharat Chamber of Commerce, State Bank Bldg., Calcutta—7.
 103. Calcutta Stock Exchange, 7, Lyons Range, Calcutta.
 104. Calcutta Bar Librery Club, Calcutta.
 105. Indian Chamber of Commerce, India Exchange Palace, Calcutta—1.
 106. Income-tax Bar Association, 3, Government Place West, Calcutta—1

(B) INDIVIDUALS :**ANDHRA PRADESH :**

107. S.G. Dastgeir & Co., Chartered Accountants, Tilak Road, Hyderabad.

S. No.	Name of the Individual etc.	Address
108	Shri K.B.R. Hanumantha Rao,	Chandi Chowk, Khammameth, (Central Railway).
109	Shri W.S. Navani,	Member of the Research, Staff of the Administrative Staff College of India, Hyderabad.
110	Shri K.V. Narayana,	Bar-at-Law, Rajahmundry.
111	Shri V. Krishna Rao,	Himayatinager, Hyderabad.
112	Prof. Kishan Chand,	Hyderguda, Hyderabad.
113	Shri K.S. Nurundappa,	Sales Tax Practitioner, Gajgappet Street, Raichur.
114	Shri G.L. Pophale,	Member, Income-tax Appellate Tribunal, Hyderabad.
115	Shri K.N. Phadke & Co.,	Osmangunj, Hyderabad.
116	Shri P. Rashid Ahmed,	Kurnool.
117	Shri Roddam Nagabushnam Setty,	Income-tax Auditor, Gulzar Street, New Town, Anantapur.

ASSAM :

118	Svs. I.C. Bothra and K.M. Sethia,	Taxation Consultants, A.T. Road, Jorhat.
119	Shri M. Chakraborti,	Prof. of Commerce, J.B. College, Jorhat.
20	Shri Nalini Kanta Das,	P.O. Karimganj, Distr. Kachar, Assam.
121	Shri J.M. Raina,	Chief Commissioner, Manipur.
122	Shri P.L. Shome,	Dy. Secretary, Finance Department, Shillong.
123	Shri Sohan Lal Sharma	Pleader, Jallan Nagar, P.O. Dibrugarh.

BIHAR :

124	Shri Girindia M. Misra,	Darbhanga.
125	Shri Jaglal Chandiri,	Bearing Road, Patna.
126	Shri B L. Kanodia,	Sasram.
127	Shri C.B. Sastry,	C/o M/s Sastri & Co., Tax Consultants, New Market, Jalna.

BOMBAY :

128	Shri S.B. Athalye,	168-F Vincent Road, Dadar, Bombay—14.
129	Shri Ambalal Sarabhai,	P.B. No. 28, Ahmedabad.
130	Shri K.J. Bhappu,	12—Cross Lane, Khetwadi, Bombay—4.
131	Shri C.H. Bhaba,	Ballard Estate, Bombay.

S. No.	Name of the Individual etc.	Address
132	Shri M.P. Bilimoria, . . .	393, Lamington Road, Bombay.
133	Shri Charat Singh, . . .	Kurla Road, Andheri, Bombay.
134	Shri C.C. Chokshi, . . .	Chartered Accountant, Fort, Bombay.
135	Shri R.C. Cooper, . . .	Chartered Accountant, 51, Mahatma Gandhi Road, Fort, Bombay.
136	B.N. College of Commerce, . . .	Poona-4.
137	Shri Chunilal B. Mehta, . . .	43, Mahatma Gandhi Road, Bombay-1.
138	Shri Chinobhai C. Javeri, . . .	Fort, Bombay.
139	Shri N. Dandekar, . . .	A.C.C., Cement House, 121, Queens Road, Bombay-1.
140	Shri R.K. Dalal, . . .	49-55, Apollo Street, Fort, Bombay-1.
141	Shri Dadubhai M. Amin, . . .	Patel Society, Ellis Bridge, Ahmedabad.
142	Shri M.M. Dave, . . .	Gita-2, Dawn Area, Bhavnagar.
143	Svs. Dalal Desai & Kumaria, . . .	Sir Phirozsha Mehta Road, Fort, Bombay-1.
144	Deccan Institute of Commerce, . . .	394, Budhwar Petah, Ganesh Road, Poona.
145	Shri I.S. Gulati, . . .	Reader in Economics, Baroda University.
146	M/s Gondalia & Mundviwala, . . .	Chartered Accountants, Hamam House, Hamam Street, Fort, Bombay.
147	Shri D.R. Gadgil, . . .	Director, Gokhale Institute of Politics and Economics, Poona.
148	Homi Ardeshir Bulsara, . . .	Gokal Das Tejpal Estate, Bombay-7.
149	Mr. Hiralal Amritlal Shah, . . .	69, Marine Drive, 4th Floor, Block No. 10, Bombay-1.
150	Shri R.N. Jain, . . .	Pleader, Itwari, Nagpur-2.
151	M/s Kasturbhai Lalbhai, . . .	Ahmedabad.
152	M/s Kailash A. Vakil & Co., . . .	Bombay
153	Shri Jamshedji Kanga, . . .	Bombay
154	Svs. Kolah & N.A. Palkhivala, . . .	Bombay.
155	Shri P.C. Malhotra, . . .	President, Income-tax Appellate Tribunal, Bombay.
156	Shri L.R. Mehta, . . .	Tankewile, Gowalia, Tank Road, Cumballa Hill, Bombay-26.
157	Shri T.A. Mudaliar, . . .	63, Bholabhai Desai Road, Bombay.
158	Shri Y.G. Mangaldas, . . .	Sir Mangal Dass House, 303, Lamington Road, Bombay-4.

S. No.	Name of the Individual etc.	Address
159	Shri V.D. Mazumdar, . . .	'Roxana', 109, Queens Road, Bombay—1.
160	Shri G.B. Mankad, . . .	Mirzapur, Ahmedabad.
161	Shri T.K. Nirchandani, . . .	'Nandan—Van', Ganeshkhind, Poona-7.
162	M/s R. Nanabhoy & Co., . . .	Ballard House, 14, Mangalore Street, Bombay—1.
163	Shri K.L. Nayar, . . .	Partner, The Bombay Fine Worsted Manufacturers Castle Mills, Thana.
164	M/s G.M. Oka & Co., . . .	Chartered Accountants, 180-Budhwar Peth, Poona-2.
165	Shri N.K. Petigara, . . .	51, Mahatma Gandhi Road, Fort Bombay-1.
166	Shri B.D. Patel, . . .	Vice Chancellor, Sardar Vallabhai Vidyapeeth, Vallabh Vidya Nagar, Bombay.
167	M/s Pandia & Co., . . .	Hamam House, Hamam Street, Bombay—1.
168	Shri B.S. Pimpalkara, . . .	Nanpura, Athnagar Mohala, Surat.
169	Shri Rasiklal M. Shah, . . .	Chartered Accountant, Bombay.
170	Shri Rasikhlal Nathalal Shah,	Near Doshiwadas Pole, Ahmedabad.
171	Shri C.C. Shah, . . .	11, Lajpatrai Road, Bombay—24.
172	M/s K.S. Sohoney & Co., . . .	Chartered Accountants, 340 S. Kasaba Sholapur.
173	Shri H.D. Sanghvi, . . .	Chartered Accountant, Masjid Bunder Road, Bombay.
174	Svs. S.B. Shah & Others, . . .	Indian Globe Chamber, 7th Floor, Fort Street, Bombay—1.
175	Shri D.D. Shah, . . .	8-10, Tamarind Lane, Deepak Insurance Bldg., 2nd Floor, Fort, Bombay-1.
176	M/s Standard Vacuum Oil Co., . . .	P.B. No. 355, Bombay-1.
177	Shri R.G. Saraiya, . . .	C/o Indian Merchants' Chamber, Bombay.
178	Shri V.D. Saranghpani, . . .	Advocate, Dhantoli, Nagpur.
179	Shri S.P. Jain, . . .	Fort, Bombay.
180	Shri Satyanarain Deora, . . .	Govindnagar, Malad, Bombay.
181	Shri M.R. Shah, . . .	Amravatti, Bombay.
182	Shri B.R. Shenoy, . . .	University School of Social Sciences, Gujarat University, Ahmedabad.
183	M/s Tulsidas Kilachand, . . .	45-47, Apollo Street, Fort, Bombay-1.
184	M/s Tata Industries (P) Ltd., . . .	Bombay House, Bruce Street, Fort, Bombay—1.

S. No.	Name of the Individual etc.	Address
185	Shri B.L. Tholiya, . . .	Santa Cruz East, Bombay-25.
186	Shri P.P. Vora, . . .	C/o Standard Vacuum Refinery Co. of India Ltd., Trombay, Bombay—38.
187	Shri J. B. Vachha, . . .	Banoo Mansion, Cumbala Hill, Bombay-26.
188	M/s Valkart Bros., . . .	Bombay.
189	Shri Vardachari, . . .	Queens Road, Bombay-1.
190	Shri Waman P. Kabadi, . . .	Journalist, Bombay-21.

DELHI :

MEMBERS OF PARLIAMENT :

191	Shri Ahmed Said (Nawab of Chhat-tari),	(Rajya Sabha). New Delhi.
192	Shri Babubhai M. Chirai, . . .	(Lok Sabha), New Delhi.
193	Shri H.C. Heda, . . .	(Lok Sabha), New Delhi.
194	Dr. P.J. Thomas, . . .	(Rajya Sabha), New Delhi.
195	Shri J.C. Chatterjee, . . .	(Rajya Sabha), New Delhi.
196	Shri Kamalnayan Bajaj, . . .	(Lok Sabha), New Delhi.
197	Shri Mool Chand Jain, . . .	(Lok Sabha), New Delhi.
198	Smt. Manjula Devi, . . .	(Lok Sabha), New Delhi.
199	Shri Mriganka Mohan Sur, . . .	(Rajya Sabha), New Delhi.
200	Shri B.R. Mahagaonkar, . . .	(Lok Sabha), New Delhi.
201	Shri P.C. Barooah, . . .	(Lok Sabha), New Delhi.
202	Shri Rohit Dave, . . .	(Rajya Sabha), New Delhi.
203	Shri V.C. Shukla, . . .	(Lok Sabha), New Delhi.
204	Shri M. Shah, (Maharaja of Tehri Garhwal),	(Lok Sabha), New Delhi.
205	Shri G.D. Somani, . . .	(Lok Sabha), New Delhi.
206	Shri B. Shiva Rao, . . .	(Rajya Sabha), New Delhi.

OTHER INDIVIDUALS :

207	Shri Babu Lal, . . .	New Delhi.
208	Shri A.K. Chanda, . . .	Comptroller & Auditor General of India, New Delhi.
209	Shri C.C. Desai, . . .	New Delhi.
210	Shri P.L. Jaitly, . . .	Kishwar Manzil, East Park Road, New Delhi.
211	Shri K.C. Khanna, . . .	Retd. Commissioner of Income-tax, Delhi.
212	Shri N.D. Karkhanis, . . .	Judicial Member, Income-tax Appellate Tribunal, New Delhi.
213	Shri K.R.K. Menon, . . .	Chairman, Industrial Finance Corporation, New Delhi.

S. No.	Name of the Individual etc.	Address
214	Shri R.K. Tandon,	Tandon House, 23, Darya Ganj, New Delhi.
215	Shri Sri Ram,	22, Curzon Road, New Delhi.
216	Shri Shyam K. Gupta,	Chartered Accountants, Chandni Chowk, Delhi.

KERALA :

217	Shri K.P. Amrithanatha Aiyar,	Monkonpur, Kerala State.
218	Shri K. Govindan Nair,	'Jyoti Mahal', 38, Yakkara Road, Palghat.
219	M/s Harisons & Crossfield Ltd.,	Quilon.
220	M/s Joseph & Joseph,	Advocates, Ernakulam.

MADHYA PRADESH :

221	Shri Damodar Shriram,	Chichli Post, Narsinhpur.
222	Lt. Col. Pandit K.L. Dubey,	Vice Chancellor, University of Jabalpur, Jabalpur.
223	M/s R.D. Joshi & Co.,	Chartered Accountants, Indore.
224	M/s V.K. Jhalani & Co.,	Income-tax Consultants, Ratlam.
225	Shri Mata Prasad,	Vikram University, Ujjain.
226	Shri V.D. Mehta,	Lecturer in Economics, Govt. Hamidia College, Bhopal.
227	Shri Suresh Chand Dubey,	39, Nihalpura, Indore.
228	Shri Shreeram Kashiwala,	Post Chichli, Distt. Narsingpur.
229	Shri R.C. Trivedi,	Registrar, High Court, Jabalpur.

MADRAS :

230	Shri V.P. Choudry,	Accountant Member, Income-tax Appellate Tribunal, Madras.
231	Shri V.S.K. Duraiswamy Nader,	Retd. Commissioner of Income-tax, Green Villa, Madras—18.
232	Shri A. Mohamad Ubaidulla,	Chartered Accountant, 5, Marakayar Labbai Street, Madras—1.
233	Shri G.D. Naidu,	Gopal Bagh, Coimbatore.
234	Shri R.N. Rajan Aiyar,	Chartered Accountant, Mylapore, Madras—4.
235	Shri C.S. Rama Rao Sahib, and Shri S. Ranganathan,	Special Counsel for Income-tax, Madras.
236	Shri A. Ramaiya,	Advocate, Madurai.
237	Shri S. Rajagopalan,	Carview, Salem—2.
238	Shri K. Sadagopachari,	Accountant Member, Income-tax Appellate Tribunal, Madras.

S. No.	Name of the Individual etc.	Address
239	Shri V. Soundarajan, . . .	Chartered Accountant, Catholic Centre, Madras—1.
240	M/s Sundram & Srinivasan, . . .	Chartered Accountants, 161, Mount Road, Madras.
241	Shri S. Suryanarayanan, . . .	Suri & Co., P.B. No. 1354, Madras—1.
242	Shri M. Subbaraya Aiyar, . . .	Advocate, Mylapore, Madras.
243	Shri S. Srinivasan, . . .	'Sri Nivasan', 7 Trustpakam, Raja Annamalaipuram, Madras—28.
244	Shri V.S. Sundaram, . . .	C/o Shri K.R. Ramamani, Advocate Madras.
245	Shri C.S. Sastri, . . .	Member, Company Law Advisory Commission, 15-Armenian, Madras—1.
246	Shri K..S. Sankararaman, . . .	Judicial Member, Income-tax Appellate Tribunal, Madras.
247	Shri S. Varadachari, . . .	'Govardhan', Mylapore, Madras—4.
248	Shri T.V. Viswanatha Aiyar, . . .	Advocate, Mylapore, Madras—4.
249	M/s V.V. Vanniaperumal & Sons, . . .	P.B. No. 19, Virudhunagar.

MYSORE :

250	Shri K. Balasubramoniam, . . .	Secretary to the Government, Revenue Department, Mysore.
251	Shri P. Kodanda Rao, . . .	Bangalore.
252	Shri G. Lakshmana Rao, . . .	Chartered Accountant, Bangalore.
253	Shri S.R. Ponaiya, . . .	Yadavagiri, Mysore City.
254	Shri M.R. Rangaratnam, . . .	Chartered Accountant, Bangalore—2.
255	Shri S. Srikantaiya, . . .	29/30, S.S. Temple Street, Visweshwarapuram, Bangalore—4.

PUNJAB :

256	Shri J.S. Basur, . . .	Finance Secretary to the Punjab Government, Chandigarh.
257	Shri B.D. Bansal, . . .	Chartered Accountant, Amritsar.
258	Shri R.K. Bansal, . . .	Do.
259	Shri Birendra Khosla, . . .	Advocate, Patiala.
260	Shri A.N. Grover, . . .	Judge, Punjab High Court, Chandigarh.
261	Shri Jagdish Chandra, . . .	Advocate, Ludhiana.
262	Shri S.N. Khanna, . . .	Advocate, Amritsar.
263	Svs. Ratanchand Debho Rattan, . . .	c/o M/s Dewanoo Ram Rattanchand, P.O. Narkanda, Distt. Mehasa.
264	Svs. H.M. Singhal & Others, . . .	Income-tax and sales Tax Advisers Sangrur, Rohtak.

S. No.	Name of the Individual etc.	Address
RAJASTHAN :		
265	Shri V.T. Bijlani,	Income-tax Practitioner, Gulab Wadi, Ajmer.
266	Shri H.C. Rara and another,	Commerce College, Jaipur.
UTTAR PRADESH :		
267	Shri M.L. Aggarwal,	Pleader, Lucknow.
268	M/s Basant Ram & Sons,	Chartered Accountants, Lucknow.
269	Banaras Hindu University,	Banaras.
270	Shri Babu Lal Vaish,	Retd. Commissioner of Income-tax, 'Renbasera', P.L. Sharma Road, Meerut.
271	Shri Fateh Singh Rana,	G-2, Jawahar Quarter, Meerut.
272	Shri Gopal Behari,	Standing Counsel. Income-tax Department, Allahabad.
273	Shri Hemraj Mehrotra,	Dwarkadish Road, Kanpur.
274	R.B. Krishnan Lal Gupta,	'Rose Bank', Kanpur.
275	Shri Mohan Lal Agarwal,	133-C, New Mandy, Muzaffarnagar.
276	Shri S.P. Mehra,	Editor, Civic Affairs, Kanpur.
277	Shri S.S. Nigam,	Dean, Faculty of Law, Lucknow University, Lucknow.
278	Shri R.S. Poddar,	Chartered Accountant, Azamgarh.
279	Shri R.C. Agarwal,	15/253, Civil Lines, Kanpur.
280	Shri R.N. Ram,	P.O. Sahatwar, Ballia.
281	M/s J.N. Sharma & Co.,	Chartered Accountants, The Mall Kanpur.
282	Shri Sital Prasad,	J. K., Organisation, Kamla Tower Kanpur.
283	Shri S. Vaish,	Chartered Accountant, 15/96 Civil Lines, Kanpur.
WEST BENGAL :		
284	Shri .N.D. Aggarwalla,	National Iron & Steel Co. Ltd., Dalhousie Square, Calcutta.
285	Shri Ashutosh Sen,	Social Worker and Teacher, Hoogly.
286	Shri B.M. Agarwal,	Advocate, Calcutta.
287	Shri R.S. Agarwal,	Calcutta.
288	Shri B.S. Gupta,	11/9 Chowringee Terrace, Calcutta—20.
289	Shri N. Banerjee,	4/1 Kundu Lane, Calcutta—25.
290	M/s Burani Bros. (P) Ltd.,	43, Strand Road, Calcutta.
291	M/s N. Chakravarti & Co.,	Chartered Accountants, Calcutta.

S. No.	Name of the Individual etc.	Address
292	Shri K.K. Chakravarti,	Income-tax Consultant, Calcutta—13.
293	Shri S.B. Dandekar,	Chartered Accountant, P-36 India Exchange Place, Calcutta—1.
294	Shri D.K. Dasgupta,	27-Gopal Bose Lane, Calcutta—9.
295	Shri S.C. Guha,	8½, Hastings Street, Calcutta—1.
296	M's P.C. Kandu & Co.,	Chartered Accountants, Calcutta—1.
297	M's Lodha & Co.,	Chartered Accountants, Calcutta.
298	Shri B.N. Mukherjee	Member, Income-tax Appellate Tribunal, Calcutta.
299	Shri N. Nandi,	127, Banamali Naskar Road, Calcutta.
300	Shri Ramkishan Dhanuka,	C/o Sowbhagwan & Sons, 7, Lyons Range, Calcutta.
301	Shri S.C. Sen,	13, Sevak, Baidya Street, Calcutta—29.
302	Dr. N.C. Sen Gupta,	Member, Law Commission, Calcutta-29.
303	M's Singhi & Co.,	1-B, Old Post Office Street, Calcutta—1.
304	Shri Tara Chand Saraf and Others,	Advocates, 66, Pathuriaghata Street, Calcutta.

III—DEPARTMENTAL

(A) C.B.R.

- 305 Central Board of Revenue, New Delhi.

(B) SERVICE ASSOCIATIONS :

- 306 All-India Federation of Income-tax Gazetted Services Association, New Delhi.
- 307 All-India Income-tax Non-gazetted Staff Federation, New Delhi.
- 308 Association of the Gazetted Officers of the Income-tax Department, Aayakar Bhawan, Bombay.
- 309 Bengal Income-tax Gazetted Services Association, 3, Govt. Place, West, Calcutta.
- 310 Indian Revenue Service (Income-tax) Association, Bombay.
- 311 Income-tax Inspectors' Association, Bombay.
- 312 Income-tax Ministerial Officers' Association, Tripura Unit, Assam.

313	Income-tax Gazetted Services Association,	Chirag Ali Lane, Hyderabad.
314	Indian Revenue Services (Income-tax) Association, (Calcutta and Delhi Branches),	C.R. Bldg., New Delhi.
315	Income-tax Gazetted Services Association,	C.R. Bldg., New Delhi.
316	Income-tax Non-gazetted Staff Association,	New Delhi.
317	Income-tax Peons and Notice Servers Association,	Amritsar.
318	Income-tax Gazetted Services Association,	U.P., Kanpur.
319	Income-tax Inspectors' Association,	U.P., Kanpur.
320	Income-tax Inspectors' Association,	W. Bengal, Calcutta.
321	Madras Income-tax Gazetted Services Association,	Madras.
322	Mysore Income-tax (Gazetted) Services Association,	Bangalore.

(C) DIRECTORS OF INSPECTION :

323	Shri S.P. Lahiri
324	Shri P. Mukherjee. . . .
325	Shri Raj Singh
326	Shri N.K. Saxena. . . .
327	Shri K.P. Sinha

(D) Commissioners of Income-tax

- 328. Shri K. D. Dholakia.
- 329. Shri P. C. Goyal.
- 330. Shri S. K. Gupta.
- 331. Shri W. K. Gharpurey.
- 332. Shri S. K. Ganguli.
- 333. Shri T. Gopala Menon.
- 334. Shri S. P. Jain.
- 335. Shri Jamuna Prasad Singh.
- 336. Shri R. Kothandaraman.
- 337. Shri R. S. Naik.
- 338. Shri M. Hamid Mirza.
- 339. Shri S. A. L. Narayana Rao.
- 340. Shri N. D. Mehrotra.
- 341. Shri M. E. Rehman.
- 342. Shri P. T. Ranadive.
- 343. Shri V. Sundaramurthi Mudaliar.
- 344. Shri Syed Noor.

(E) Departmental Gazetted Officers.

ANDHRA PRADESH

Assistant Commissioners.

- 345. Shri V. R. Bapat.
- 346. Shri F. G. Jilani.
- 347. Shri S. V. Ramaswamy.

Income-tax Officers.

- 348. Shri M. Bhimasankaran.
- 349. Shri S. Balasubramaniam.
- 350. Shri K. Balakrishnan.
- 351. Shri M. Gulam Ghouse.
- 352. Shri N. Jangamaya.
- 353. Shri T. E. S. R. Lakshmi Narasimhan.
- 354. Shri R. Nagarajan.
- 355. Shri I. Nagabushana Rao.
- 356. Shri K. J. Reddy.
- 357. Shri M. Rustum Ali.
- 358. Shri S. Rajaratnam.
- 359. Shri M. Subbaraman.
- 360. Shri V. Satya Narayana Rao.
- 361. Shri K. Satyanarayana.
- 362. Shri A. Vaidyanathan.

ASSAM

Assistant Commissioners.

- 363. Shri H. C. Sen.

Income-tax Officers.

- 364. Shri K. P. Ghosh.

BOMBAY CITY I & II

Assistant Commissioners.

- 365. Shri S. H. Bhat.
- 366. Shri A. K. Das Gupta.
- 367. Shri H. M. Jhala.
- 368. Shri G. S. Sampath.
- 369. Shri N. Subha Rao.
- 370. Shri H. P. Sharma and five other.

Income-tax Officers.

- 371. Shri A. Bhashyam and three others.
- 372. Shri M. S. Desai.
- 373. Shri V. S. Gaitonde.
- 374. Shri E. D. Helms.
- 375. Shri K. S. Kakaria.
- 376. Shri A. M. Ramakrishnan.
- 377. Shri K. C. Thomas.

BOMBAY (CENTRAL)

Assistant Commissioners.

- 378. Svs. P. Madhava Rau and M. S. Nandkarni

Income-tax Officers.

- 379. Shri M. P. Patel & others.

BOMBAY SOUTH

Assistant Commissioners.

- 380. Shri B. S. Dastur.
- 381. Shri G. M. Hiremath.
- 382. Shri C. G. Joshi.
- 383. Shri N. D. Kumthekar.
- 384. Shri A. M. Rao.
- 385. Shri N. D. Sakhwalkar.

Income-tax Officers.

- 386. Shri R. S. Ayengar.
- 387. Shri A. N. Brahme.
- 388. Shri M. R. Bastikar.
- 389. Shri K. L. Bandwar.
- 390. Shri B. S. Devasthali.
- 391. Shri M. N. Deshmukh.
- 392. Shri G. K. Dhule.
- 393. Shri D. M. Deo.
- 394. Shri P. V. Godbole.
- 395. Shri G. D. Gidwani.
- 396. Shri S. D. Kulkarni.
- 397. Shri N. A. Khan.
- 398. Shri M. A. Khan.
- 399. Shri M. G. Mahalye.
- 400. Shri M. A. Mahalle.
- 401. Shri G. B. Mehta.
- 402. Shri S. H. Mirji.

- 403. Shri Y. N. Pawar and two others.
- 404. Shri V. M. Patwardhan.
- 405. Shri V. K. Pillai.
- 406. Shri S. G. Rawal.
- 407. Shri A. B. Ramachandra Rao.
- 408. Shri V. K. Subramaniam.
- 409. Shri G. N. Samant.
- 410. Shri J. Subramaniam.

BOMBAY NORTH

Assistant Commissioners.

- 411. Shri D. S. Bapat.
- 412. Shri P. G. Deshpande.
- 413. Shri K. Nair.
- 414. Shri H. A. Shah.

Income-tax Officers.

- 415. Shri M. P. Argikar.
- 416. Shri G. D. Gidwani.
- 417. Shri B. B. Khare.
- 418. Shri R. P. Patel.
- 419. Shri A. N. Rao.
- 420. Shri S. H. Sadar.
- 421. Shri Y. P. Sud.

BIHAR AND ORISSA

Assistant Commissioners.

- 422. Shri T. Bellan.
- 423. Shri G. R. Desai.
- 424. Shri N. G. Das Gupta.
- 425. Shri G. Ghosh.
- 426. Shri R. N. Limaye.
- 427. Shri P. N. Roy.

Income-tax Officers.

- 428. Shri S. N. Achari.
- 429. Shri S. N. Chatterjee.
- 430. Shri R. K. Ghosh.
- 431. Shri A. K. Jana.
- 432. Shri J. Pathak.
- 433. Shri M. M. Parshad.
- 434. Shri S. N. Rotho.

DELHI AND RAJASTHAN

Assistant Commissioners.

- 435. Shri Kulwant Rai.
- 436. Shri S. K. Lall.
- 437. Shri R. L. Malhotra.
- 438. Shri Prem Nath.
- 439. Shri S. R. Kharabanda.
- 440. Shri G. D. Tandon.

Income-tax Officers.

- 441. Shri V. P. Gupta.
- 442. Shri C. R. Mehta.
- 443. Svs. P. K. Rao and R. Kapoor.

KERALA

Assistant Commissioners.

- 444. Shri T. Y. C. Rao.
- 445. Shri P. S. Subramaniam.
- 446. Shri W. M. Subramaniam.

Income-tax Officers.

- 447. Shri K. Venkataraman.

MADHYA PRADESH

Assistant Commissioners.

- 448. Shri D. N. Amroliwala.
- 449. Shri G. R. Hedge.
- 450. Shri O. V. Kuruvilla.
- 451. Shri S. R. Mehta.
- 452. Shri R. D. Shah.

Income-tax Officers.

- 453. Shri Prem Nath.
- 454. Shri B. K. Srivastava.
- 455. Income-tax Officer, Award, Nagpur.
- 456. Income-tax Officer, B-Ward, Nagpur.

MADRAS

Assistant Commissioners

- 457. Shri V. V. Badami.
- 458. Shri G. E. Joseph.
- 459. Shri K. S. V. Raman.
- 460. Shri K. Rama Rao.
- 461. Shri P. Sadagopan.
- 462. Shri V. D. Sonde.
- 463. Shri V. S. Shetty.
- 464. Shri P. S. Viswanathan.

Income-tax Officers.

465. Shri E. Hariharan.

466. Shri P. C. Josoph.

MYSORE

Assistant Commissioners.

467. Shri A. Ram Mohan Rao.

468. Shri S. T. Tirumalachari.

Income-tax Officers.

469. Shri A. G. Idnani.

470. Shri C. V. Natarajan.

471. Shri A. Parameswara Iyer.

PUNJAB

Assistant Commissioners.

472. Shri V. P. Gupta.

473. Shri S. S. Ratna.

474. Shri C. P. Yadava.

Income-tax Officers.

475. Shri J. S. Dulat.

476. Shri G. L. Gupta.

477. Shri Harbans Singh.

478. Shri R. D. Malhotra.

479. Shri Trilochan Singh.

UTTAR PRADESH

Assistant Commissioners.

480. Shri B. Sharan.

481. Shri R. D. Kaushal.

Income-tax Officers.

482. Shri K. B. Bhatnagar.

483. Shri K. M. Chaudhry.

484. Shri O. P. Chopra.

485. Shri C. P. Singh.

WEST BENGAL

Assistant Commissioners.

486. Shri J. Dass.

487. Shri V. Gopinathan.

488. Shri K. Jagan Nathan.

489. Shri Kailash Narain.

490. Shri N. Kanungo.

491. Shri G. S. Srivastava.

- 492. Shri A. F. Swamy.
- 493. Shri S. Shastri.
- 494. Shri C. N. Vaishnav.
- 495. Shri M. D. Varma.

Income-tax Officers.

- 496. Shri Bhim Sain.
- 497. Shri B. K. Chaudhry.
- 498. Shri S. N. Mukerjee.
- 499. Shri P. C. Pandey and five others.
- 500. Shri S. K. Roy.
- 501. Shri Rajendra.
- 502. Shri A. C. Sen.
- 503. Shri K. C. Sanyal.

(F) Departmental Non-Gazetted Officers

ANDHRA PRADESH

- 504. Shri C. Bhumasen Rao.
- 505. Shri V. Gopala Rao.
- 506. Shri G. Subramanyam.

BOMBAY: CITY I & II

- 507. Shri G. J. Ajwanl.
- 508. Shri P. S. Madhavan.

BOMBAY SOUTH

- 509. Shri K. W. Gorhe.
- 510. Shri M. R. Joshi.
- 511. Shri S. Y. Patel.
- 512. Shri G. Satyanarayana.

BOMBAY NORTH

- 513. Shri V. M. Bhuve.
- 514. Shri L. P. Desai.

BIHAR AND ORISSA

- 515. Shri Basudeo Prasad.
- 516. Shri S. K. Mazumdar.
- 517. Shri R. N. Parshad Sinha.

DELHI AND RAJASTHAN

518. Shri Lal Singh Thappar.

KERALA

519. Shri P. C. Mathai.

520. Shri S. Rajagopalan.

MYSORE

521. Shri J. Amala Das.

522. Shri K. P. Dhanwant Raju.

523. Shri G. H. Padmarajiah.

524. Shri S. R. Subba Rao.

525. Shri Thomas David.

PUNJAB

526. Shri Harbhajan Singh.

527. Shri R. S. Mohan.

528. Shri S. P. Goel.

UTTAR PRADESH

529. Shri C. P. Sharma.

WEST BENGAL

530. Shri A. K. Mukerjee.

531. Shri A. K. Bagchi.

532. Shri S. K. Bhattacharjee.

533. Shri R. G. Ghosh.

534. Shri Subimal Das.

535. Shri Sital Prashad Sen.

APPENDIX V

List of persons who gave oral evidence before the Committee.

Place	Date	Serial No.	Name of the witness
New Delhi	17-12-58	1	Mr. N. Kaldor, Reader in Economics, University of Cambridge.
Hyderabad	12-1-59	2	General S.M. Srinagesh, Principal, Administrative Staff Colleges, Hyderabad.
	Do.	3	Andhra Pradesh Grain and Seed Merchants Association, Hyderabad. Representatives:— Shri Tokershi Lalji Kapadia. Shri Kothuru Seetayya Gupta. Shri Satyanarayana Gupta, and Shri Venugopal.
	Do.	4	Indian Chamber of Commerce, Guntur, Representatives— Shri P. Ramachandra Rao. Shri Gopalakrishna Reddi.
	Do.	5	Shri G.L. Pophale, Member, Income-tax Appellate Tribunal, Hyderabad.
Hyderabad	13-1-59	6	Government of Andhra Pradesh—Representatives— Shri K. Brahmananda Reddy. Finance Minister. Shri C. Damodara Reddy, Finance Secretary.
	Do.	7	Shri P.T. Ranadive, Commissioner of Income-tax, Andhra Pradesh, Hyderabad.
Madras	14-1-59	8	Shri Ramnath Goenka, Madras.
	Do.	9	Shri V.P. Choudhry, Member Income-tax Appellate Tribunal, Madras.
	Do.	10	Shri K. Sadagopachari, Member, Income-tax Appellate Tribunal, Madras.
	Do.	11	Shri C.S. Rama Rao Sahib, Advocate and Standing Counsel, Income-tax Department, Madras.
Madras	15-1-59	12	Shri K.S. Sankararaman, Member, Income-tax Appellate Tribunal, Madras.

Place	Date	Serial No.	Name of the witness
Madras	15-1-59	13	Hindustan Chamber of Commerce, Madras. —Representatives— Shri G.R. Rao, Secretary. Shri R.L. Kotadia.
	Do.	14	Southern India Chamber of Commerce, Madras. Representatives — Shri K.V. Srinivasan. President. Shri D. Srinivasan, Asstt. Secretary. Shri S. Narayanaswamy. Shri N.C. Krishnan. Shri R. Venkataraman. Shri V. Soundararajan. Shri R.A. Narayana Iyengar.
		15	The Coimbatore Cloth Merchants, Association, Coimbatore. Representatives — Shri R. Subba Rao.
Madras	16-1-59	16	The Tamil Chamber of Commerce, Madras. Representatives — Shri A. Nagappa Chettiar, President. Shri V.S.L. Nathan, Hon. Secretary. Shri P.S. Gopalakrishnan, Hon. Jt. Secy. Shri C.K. Furaivelu. Shri T.K. Singaram. Shri C.V. Sreenivasan. Prof. P.D. Swaminatha Mudaliar.
	Do.	17	The Madura Ramnad Chamber of Commerce, Madura. Representatives — Shri S. Chidambaranathan, Shri K. Sivasubramanian, Shri R. Venkateraman.
	Do.	18	Government of Madras. Representatives — Shri T.A. Verghese, Secretary, Finance Department. Shri J. Sivanandam, Secretary, Revenue Department. (Svs. R.M. Sundaram, Member, Board of Revenue, J. Sivanandam, Secretary Revenue Department and Kannappa Mudaliar, Secretary, Board of Revenue also gave evidence on 17-1-1959).

Place	Date	Serial No.	Name of the witness
		19	The Virudhunagar Chamber of Commerce, Virudhunagar. Representatives— Shri S.P. Kothala Nadar, President. Shri S.P.G.R. Nithyanandan, Vice President. Shri N. Rajendran, Secretary. Shri V.V.S. Kesavan, Jr. Secretary.
Madras	16-1-59	20	The Madras Trades Association, Madras. Representatives— Shri J.V.P. Rao, Chairman. Shri A.S. Devitra, Secretary. Shri S. Krishnaswamy.
	Do.	21	The Madras Stock Exchange, Madras. Representatives— Shri V. Natarajan, President. Shri K.S. Vaidyanathan, Vice President. Shri B.R. Krishnamurthi, Secretary. Shri J.V. Somayajuly, Shri V. Rangachari.
Madras	17-1-59	22	Shri T.T. Krishnamachari, Madras.
	Do.	23	Shri S. Suryanarayanan, Auditor, Madras.
	Do.	24	Shri M. Nilkantan, Director, The Research Institute, Madras.
	Do.	25	Shri S. Varadachari. Ex-Chairman, Income-tax Investigation Commission, Madras.
	Do.	26	Shri W.K. Gharpurey, Commissioner of Income-tax, Madras.
Bangalore	19-1-59	27	Government of Mysore. Shri B.D. Jatti, Chief Minister. Shri J.H. Shamsuddin, Dy. Minister for Finance. (Shri J.H. Shamsuddin Dy. Minister of Finance along with Shri K. Balasubramanyam, Revenue Secretary, also gave evidence on 20-1-1959).
	Do.	28	The Mysore Chambr of Commerce, Bangalore. Representatives— Shri P.K. Sarangapani Mudaliar, President. Shri Jeenabhai Devidas, Vice President. Shri G.N. Krishna Murthy. Shri M.R. Ranga Rathnam. Shri J. Srinivasan. Shri Ramanarayan Chellaram. Shri Y.N. Gangadhra Setthy.

Place.	Date	S. No.	Name of the witness
	Do.	29	The Mangalore Cashew Mfgs., Association, Mangalore— Representatives— Shri Mizar Sadananda Pai and Shri Gerald Fernandes.
	Do.	30	Shri P. Kodanda Rao, Bangalore.
	Do.	31	Shri V. Sundaramurthy Mudaliar, Commissioner of Income-tax, Mysore, Bangalore.
Trivandrum . . .	21-1-59	32	The Chamber of Commerce, Chalai, Trivandrum. Representative— Shri S.V. Pandit, Vice President. „ S. Padmanabhan Chettiar. „ C. Narayanan Nair. „ Parameswaran Pillai. „ N. V. Ramankutty Nair.
	Do.	33	The Chamber of Commerce, Trichur. Representatives— Shri K.S. Manavalan, Hony. Secretary. „ K.R. Kaimal.
	Do.	34	Government of Kerala— Representatives : Shri C. Achutha Menon, Minister for Finance. Smt. K.R. Gouri, Minister for Revenue Shri P.S. Padmanabhan, Secretary, Finance Department. „ K.K. Ramankutti, Secretary, Revenue Department. „ K.P.K. Menon, Member, Board of Revenue. „ George Thomas, Member, Board of Revenue.
	Do.	35	Shri K. Govindan Nair, Retd. Member, Central Board of Revenue, Palaghat.
Trivandrum . . .	22-1-59	36	Shri M. Hameed Mirza, Commissioner of Income-tax, Kerala & Coimbatore.
	Do.	37	The Alleppey Oil Millers' & Merchants Association, Alleppey—Representative Shri V. Anantharama Aiyer. „ K. Parthasarathy.
Calcutta.. . . .	17-2-59	38	Government of West Bengal. Representatives— Shri B.C. Sinha, Minister-in-charge, Land and Land Revenue. „ H.N. Roy, Finance Secretary. „ A.M. Kusari, Dy. Finance Secretary. „ B. Sirkar, Member, Board of Revenue.

Place.	Date	S. No.	Name of the witness
	Do.	39	The Calcutta Stock Exchange Association Ltd. Representatives— Shri B.N. Chaturvedi, President. „ C.L. Heaidas.
Calcutta	17-2-59	40	The Bengal National Chamber of Commerce & Industries, Calcutta. Representatives— Shri A.R. Datta Gupta, Dy. Secretary. „ K.N. Mookerjee. „ A. Basu. „ G. Saha. „ S.K. Roy Chaudhri.
	Do.	41	The Associated Chambers of Commerce, Calcutta. Representatives— Shri J.D.K. Brown, President. „ N. Dandekar. „ C.I. Turcan. „ J.S.F. Gibbs. „ A.H. Forster. „ F.M. Hill. „ R.M. Bomer.
	Do.	42	Indian Chamber of Commerce, Calcutta. Representatives— Shri D.N. Jalan, President. „ K. Kalyana Sunderam, Asstt. Secretary. „ B.P. Kaithan. „ A.C. Sen. „ A.L. Goenka. J.P. Gupta.
	Do.	43	The Berhampore Chamber of Commerce, Ganjam. Representatives— Shri Pakanati Narayana Rao, President. „ Immidisetty Ramamoorti, Secretary. „ Vyayaraju Kadareenatham Raju. „ Bauri Bandu Sehate. „ Nideda Velue Narasimhamurty.
Calcutta	19-2-59	44	Mr. Cober, Officer of the Internal Revenue Service, U.S.A.
	Do.	45	Shri B.N. Mukherjee, Member, Income-tax Appellate Tribunal, Calcutta.

Place	Date	S. No	Name of the witness,
Calcutta	19-2-59	46	The Bharat Chamber of Commerce, Calcutta. Representatives— Shri K.L. Dhandhanja, President. „ B.P. Poddar, Vice President. „ L.R. DasGupta, Dy. Secretary. „ Rai Bahadur M.G. Rungta, Jr. Vice President. „ R. P. Pasani. „ B. Chhawchharia. „ B.S. Kothari. „ R.N. Bangre. „ A.P. Chatterjee.
Calcutta	20-2-59	47	The Upper Assam Chamber of Commerce, Jorhat. Representative— Shri Madhak Chakravarty.
	Do.	48	Dr. N.C. Sen Gupta, Member, Law Commission.
	Do.	49	Shri P.C. Goyal, Commissioner of Income-tax, Assam, Tripura & Manipur.
	Do.	50	Shri V.V. Subramoniam, Commissioner of Income-tax, West Bengal.
	Do.	51	Shri A.R.H. Naik, Commissioner of Income-tax, Calcutta (Central).
	Do.	52	Chaudri Khazan Singh, Commissioner of Income-tax, Calcutta.
Patna	21-2-59	53	Shri R. Kothandaraman, Commissioner of Income-tax, Bihar & Orissa, Patna.
	Do.	54	The Bihar Chamber of Commerce, Patna. Representatives— Shri N.P. Agarwal, Vice President. „ Suresh Prasad, Under Secretary. „ H.R. Gutgutia. „ Kanaihyaji. „ C.S.P. Verma. „ Tarkeshwar Prasad. „ N.P. Jajodia. „ A.P. Ojha.

Place.	Date	S. No.	Name of the witness.
	Do.	55	Government of Bihar. Representatives— Shri Binodanand Jha, Minister for Revenue. „ Akika Saran Singh, Dy. Minister. „ N. Bakshi, Member, Board of Revenue. „ C.K. Raman, Addl. Member, Board of Revenue. „ S.N. Singh, Secretary Finance. „ N.P. Mathur, Secretary, Revenue. „ B.N. Sinha. „ Anwari Ali. „ H. Huda. „ Harnandan Prasad.
Kanpur	23-2-59	56	Shri T. Gopala Menon, Commissioner of Income-tax, Uttar Pradesh, Lucknow.
	Do.	57	The Merchants' Chamber of U.P., Kanpur. Representatives— Shri Sitaram Jaipuria, President. „ Padampat Singhania. „ Sital Prasad. „ P.D. Singhania. „ M.L. Bagla. „ P.L. Tandon. „ P.D. Chanda Rana. „ Ram Ratan Gupta. „ J.V. Krishnan.
Kanpur	23-2-59	58	Kanpur Kapra Committee, Kanpur— Representatives — Shri Bansidhar Kasera, President. „ Dwarika Prasad Kackkar, Sr. Vice President. „ Pannalal Tripathi, Jr. Vice President. „ Gopi Nath Seth, Secretary. „ Manrilal Newatia. „ S.J. Singh, Advocate. „ Gurprasad Kapur. „ Manoharlal Kanodia.
	Do.	59	The Kanpur Sugar Merchants' Association, Kanpur. Representatives— Shri Ganga Shanker Pandey. „ Sree Narain Bhuraria. „ Lal Bhai Patel. „ K.S. Kalra. „ Tapeswari Prasad. „ Ramchandra Bharatia.

Place	Date	S. No.	Name of the witness
Kanpur	23-2-59	60	Shri S. Vaish, Chartered Accountant. Kanpur.
Bombay	12-3-59	61	The Indian Bank's Association. Bombay. Representatives— Shri C.H. Bhaba. „ N.M. Chokshi. „ S.L. Kothari. Dr. S.G. Panandikar.
	Do.	62	The Indian Merchants' Chamber. Representatives — Shri Lal Chand Hira Chand, President. „ C.L. Gheewala, Secretary. „ Chuni Lal B. Mehta. „ R.K. Dalal. „ R.G. Saraiya. „ Gordhandas Bhagwandas. „ Ramdas Kilachand.
Bombay	13-3-59	63	The Nag Vidharba Chamber of Commerce, Nagpur. Representatives — Shri D.C. Sutaria, Sr. Vice-President.
	Do.	64	Shri S.A.L. Narayana Row, Commissioner of Income-tax, Madhya Pradesh, Nagpur & Bhandara, Nagpur.
	Do.	65	The Native Share & Stock Brokers' Association, Bombay— Representatives— Shri K.R.P. Shroff, President. Shri P.J. Jeejeebhoy, Secretary.
	Do.	66	Bombay Shareholders' Association Bombay. Representatives— Shri Bhaidas Maganlal, Vice-President „ J.J. Kapadia, Jt. Secretary. „ R. C. Cooper. „ G. Bhagwandas. „ F.J. Guzdar. „ J.C. Mashruwala.
	Do.	67	Indian Motion Picture Producers' Association and Cinematograph Exhibitors' Association of India. Representatives— Shri J.B. Roongta, President. „ G.P. Sippy, Vice-President. „ I. K. Menon, Secretary. „ R. Chandra. „ B.D. Bharucha.

Place	Date	S. No.	Name of the witness.
Bombay	14-3-59	68	Shri K.D. Dholakia, Commissioner of Income-tax, Bombay South, Poona.
	Do.	69	Shri R. Varadachari, Retd. Commissioner of Income-tax, Bombay.
	Do.	70	Shri T.A. Mudaliar, Retd. Commissioner of—Income-tax, Bombay.
	Do.	71	The Indian National Steamship Owner's Association, Bombay. Representatives— Shri T.P. Sambhoose. „ V.M. Parekh. „ Rasiklal Harjeevandas. „ R.A. Patel.
Poona	15-3-59	72	Marhatta Chamber of Commerce & Industries, Poona. Representatives.— Shri A.R. Bhat, Hony. Secretary. „ D.N. Deshpande, Asstt. Secretary. „ V.M. Deval. „ V.B. Kirtane. „ V.B. Kerur. „ M.V. Godbole. „ M.B. Tambe. „ C.V. Joag. „ P.S. Pathak.
	Do.	73	The Poona Merchants Chamber, Poona. Representatives— Shri U.B. Pokarana. „ C.H. Shah. „ M.B. Salvekar. „ C.K. Pungaliya. „ S.C. Shah. „ V.G. Bhide.
	Do.	74	Dr. D.R. Gadgil, Director, Gokhale Institute of Politics & Economics, Poona.
Bombay	16-3-59	75	The Tax Payers' Association, Bombay. Representatives— Shri V.D. Muzumdar, President. „ S.B. Athalye, Vice-President. „ B.C. Shah. „ J.J. Asher. „ L.K. Joshi. „ K.B. Bulsara.

Place	Date	S.No.	Name of the witness
Bombay	16-3-59	76	The Federation of Electricity Undertakings of India, Bombay. Representatives— Shri R.P. Aiyer, Secretary. „ N.C. Javeri. „ N.B. Davar. „ P.J. Kapadia.
	Do.	77	Indian Cotton Mills Federation, Bombay. Representatives— Shri Pratap Bhogilal. „ Ramnath Podar. „ N.N. Wadia. „ C.C. Chokshi. „ B.G. Kakasher. „ C.V. Radhakrishnan.
	Do.	78	Khan Bahadur J.B. Vachha, Retd. Commissioner of Income-tax, Bombay.
Bombay	17-3-59	79	All-India Importers & Exporters Association, Bombay. Representatives— Shri Naranji L. Kara, President. „ Chinnobhai C. Javeri, Vice-President. „ R.C. Shah. „ K.K. Manseta. „ K.T. Sanghvi. „ S.M. Shah. „ N.H. Kotak. „ Ravilal M. Shah.
	Do.	80	Shri N.K. Petigara, Bombay.
	Do.	81	Government of Bombay. Representatives— Dr. Jivraj Mehta, Finance Minister. Shri Rasiklal Parekh, Revenue Minister. „ N.T. Mone, Chief Secretary. „ Ishwaran, Finance Secretary. „ G.L. Seth, Revenue Secretary.
	Do.	82	Shri S.B. Athalye, Retd. Commissioner of Income-tax, Bombay.
	Do.	83	Shri R.P. Dalal, Ex-Accountant Member, Income-tax—Appellate Tribunal, Bombay.

Place	Date	S. No.	Name of the witness.
Bombay	17-3-59	84	Bombay Piecegoods Merchants' Mahajan Bombay. Representatives— Shri Ratansi Champs, President. „ Nanvnitlal L. Shah, Vice-President. „ R.S. Desai, Secretary. „ Ratilal C. Shah, Jr. Secretary. „ Vasantrai K. Mehta. „ Narottandas K. Shah. „ Raghavji Vallabhdas.
	18-3-59	85	The Surat Chamber of Commerce, Surat. Representatives— Shri Balubhai R. Solanki, Vice-President. „ Jayantilal G. Vakharia. „ Kanchanlal C. Kapadia. „ Ashwanibhai S. Mehta.
	Do.	86	Shri Shriyans Prasad Jain, Bombay.
	Do.	87	Dr. B.K. Madan, Bombay.
Ahmedabad	Do.	88	Shri N.D. Mehrotra, Commissioner of Income-tax, Bombay City-I.
	Do.	89	Shri R.N. Jain, Commissioner of Income-tax, Bombay City-II.
	Do.	90	Shri Syed Noor, Commissioner of Income-tax, Central Bombay.
	19-3-59	91	Shri S.P. Jain, Commissioner of Income-tax, Bombay North, Ahmedabad.
	Do.	92	Nawnagar Chamber of Commerce, Jamnagar. Representatives— Shri K.P. Shah, President. „ S.G. Shah, Secretary. „ H.V. Bardanwala. „ N.P. Shah. „ D.M. Sutaria. „ B.P. Parikh.
	Do.	93	Prof. B.R. Shenoy, Ahmedabad.
	Do.	94	The Federation of Gujerat Mills & Industries, Baroda. Representatives— Shri H.M. Shah, Secretary. „ N.B. Amin. „ N.B. Vaze. Dr. I.S. Gulati. Shri Ramanlal Chunilal.
	Do.	95	Shri Ambalal Sarabhai, Ahmedabad.

Place	Date	S. No.	Name of the witness.
Ahmedabad	19-3-59	96	Gujarat Chamber of Commerce, Ahmedabad. Representatives— Shri Rasiklal Nathalal, President. „ Chandulal Premchand, Vice-President. „ C. M. Jeejeebhairwala, Hon- Secretary. „ Amritlal Hargovandas. „ S. K. Shah. „ H. M. Talati. „ P. G. Shah. „ W. V. Dani. „ J. M. Shah.
New Delhi	10-4-59	97	Shri S. P. Lahiri, Retd. Director of Inspection (Income-tax) (Special Investigation), New Delhi.
	Do.	98	Shri K. P. Sinha, Director of Inspection (I. Tax) (Special Investigation), New Delhi.
	Do.	99	Shri Raj Singh, Retd. Director of Inspection (Income-tax), New Delhi.
	Do.	100	Shri N. K. Sakesena, Retd. Director of Inspection (Investigation), New Delhi.
	Do.	101	Shri J. P. Singh, Director of Inspection. (Income-tax) (Specail Investigation), New Delhi.
New Delhi	11-4-59	102	Ministry of Law—Government of India. Represented by— Shri K. Y. Bhandarkar, Secretary. „ K. Srinivasan, Jt. Secretary. „ K. Srinivasan, Jt. Secretary.
	Do.	103	Shri N. D. Kharkanis, Member, Income-tax Appellate Tribunal, New Delhi.
	Do.	104	Shri K. C. Khanna, Retd. Commissioner of Income-tax, New Delhi.
	Do.	105	Shri V. C. Shukla, M.P., New Delhi.
	Do.	106	Acharya J. B. Kripalani, M.P., New Delhi.
			Joint meeting with following MEMBERS OF LOK SABHA.
	Do.	107	Smt. Renuka Ray, M.P.
	Do.	108	Shri Kamalnayan Bajaj, M.P. (Shri Bajaj also appeared before the Committee individually on 14-4-59).

Place	Date	S. No.	Name of the witness
	11-4-59	109	Shri B. R. Mahagaonkar, M.P.
	Do.	110	Shri Ramnathan Chettiar, M.P.
		111	Shri P. C. Barooah, M.P.
	Do.	112	Shri M. Shah (Maharaja of Tehri Gerwal), M.P.
New Delhi	11-4-59	113	Shri R. K. Khadikar, M.P.
	Do.	114	Shri T. R. Neswi, M.P.
	Do.	115	Shri G. D. Somani, M.P.
	Do.	116	Shri T. N. Reddy, M.P.
	Do.	117	Shri L. Kotaki, M.P.
	Do.	118	Shri Hem Raj, M.P.
	Do.	119	Shri C. M. Panigrahi, M.P.
	Do.	120	Shri J. K. Dinded, M.P.
New Delhi	12-4-59	121	The Punjab & Delhi Chamber of Commerce, Delhi.
			Representatives—
			Shri F. C. Badhwar.
			Dr. Dev Raj Narang.
			Shri Premjus Roy.
	Do.	122	The National Chamber of Industries & commerce, U.P., Agra.
			Representatives—
			Shri Ram Kishore.
			Shri P. C. Gupta.
			Shri Naranjanlal Poddar.
			Shri Ram Narain Agarwal.
	Do.	123	The Madhya Pradesh Chamber of Commerce & Industry, Gwalior.
			Representatives—
			Shri R. B. Vaishya, Hony. Secretary.
			Shri B. B. Bhargava.
			Shri K. S. Davar.
			Shri N. D. Gupta.
	Do.	124	Shri S. K. Ganguli, Commissioner of Income-tax, Punjab, J. & K. and Himachal Pradesh, Simla.
New Delhi	13-4-59	125	The Indian Revenue Service (Income-tax) Association.
			Representatives—
			Shri K. Srinivasan, President.
			Shri S. P. Sachidanandan, Secretary.
			Shri Prem Nath.
			Shri S. N. Mathur.
			Shri T. A. Balakrishnan.
			Shri K. K. Vidyarthi.

Place	Date	S. No.	Name of the witness
New Delhi	13-4-59	126	The All-India Federation of Income-tax Gazetted Services Association, New Delhi. Representatives— Shri R. K. Das, President. Shri S. R. Kharbanda, Secretary. Shri L. K. Mohan, Jt. Secretary. Shri G. R. Desai. Shri S. K. Roy. Shri L. S. S. Chakarvarty. Shri S. M. Subhedar. Shri R. D. Saxena.
	Do.	127	The All-India Income-tax, Non-Gazetted Staff Federation, New Delhi. Representatives— Shri M. N. Ghosh, President. Shri D. S. Rajaratnam, Genl. Secretary. Shri G. S. Gnanam. Shri C. R. Narayanan. Shri N. R. Gamji. Shri N. Sundara Rajan. Shri S. M. S. Raghavan. Shri Amar Ganguly. Shri K. R. S. Nair. Shri V. N. Mehra. Shri M. S. Bhatia.
New Delhi	14-4-59	128	Shri Ashoka Mehta, M.P.
	Do.	129	Dr. V. K. R. V. Rao, Vice Chancellor, Delhi University.
	Do.	130	Shri V. V. Chari, Member, Central Board of Revenue, New Delhi.
	Do.	131	Federation of the Indian Chambers of Commerce & Industry, New Delhi. Representatives— Shri A. N. Murugappa Chettiar, Vice President. Shri Ramnatha Poddar. Shri G. D. Somani, M. P. Shri D. C. Kothari, Shri Kamalnayan Bajaj, M.P. Shri V. D. Majumdar. Shri S. N. Desai, Shri G. L. Bansal, Shri N. Krishnamurthi.
	Do.	132	Shri N. Dandekar, Ex-Member, Central Board of Revenue New Delhi.

Place	Date	S. No.	Name of the witness
New Delhi	16-4-59	133	Shri M. Subbaraya, Iyer, M., Advocate, Madras.
New Delhi	16-4-59	134	The Institute of Chartered Accountants, New Delhi. Representatives.— Shri C. C. Chokshi, President. Shri E. V. Srinivasan, Secretary. Shri M. P. Chitale. Shri A. S. Thakkar. Shri Raghunath Rai. Shri S. N. Desai. Shri J. H. Lodha.
	Do.	135	Shri A. K. Roy, Secretary, Department of Economic Affairs, Ministry of Finance, New Delhi.
New Delhi	17-4-59	136	Shri P. C. Malhotra, President, Income-tax Appellate Tribunal, Bombay.
	Do.	137	Shri N. A. Palkhivala, Advocate, Bombay.
	Do.	138	Shri Inderjit Singh, Joint Secretary, Eco- nomy Division, Government of India New Delhi.
New Delhi	18-4-59	139	Shri K. R. K. Menon, Chairman, Industrial Finance Corp. New Delhi.
	Do.	140	Shri S. K. Gupta, Director of Inspection (Income-tax), New Delhi.
	Do.	141	Shri Tulsidas Kilachand, Bombay.
	Do.	142	Shri M. C. Mitter, Area Manager, IBCON Private Ltd.
	Do.	143	Shri Babulal Vaish, Retd. Commissioner of Income-tax, Meerut.
	Do.	144	Shri P. C. Padhi, Addl. Deputy Comptroller and Auditor, (on behalf of Shri A. K. Chanda, Comptroller & Auditor General of India).
New Delhi	20-4-59	145	Shri Ahmed Said, Nawab of Chhattari, M.P.,
	Do.	146	Shri Prithvi Raj Kapoor, M.P.
	Do.	147	Shri Rohit M. Dave, M.P.
	Do.		Joint meeting with MEMBER OF RAJYA SABHA.

Place	Date	No. No.	Name of the witness
	20-4-59	148	Shri B. Shiva Rao.
	Do.	149	Shri Jogesh Chatterjee.
	Do.	150	Prof. P. Kane.
	Do.	151	Shri Govindan Nair.
	Do.	152	„ M. M. Sur.
	Do.	153	„ P. N. Sapru.
	Do.	154	„ Bhupesh Gupta.
	Do.	155	„ Brij Behari Sharma.
	Do.	156	„ Jaspat Rai Kapoor.
	Do.	157	„ Raghbir Singh.
	Do.	158	„ M. H. S. Nihal Singh
	Do.	159	„ Madho Ram Sharma.

APPENDIX—VI

(a) INCOME-TAX RETURN FORM FOR SMALL ASSESSEES.

(See Chapter 2, paragraph 2-29)

Form of Return of total income, under sub-section (1) and sub-section (2) or sub-section (2A) of Section 22 of the Indian Income-tax Act, 1922, for persons who derive income from various sources, including BUSINESS, PROFESSION OR VOCATION.

Income-tax Year 19..... 19.....

Name.....
 Status (whether Individual, H.U.F., Firm, etc.).....
 Address (Office) and Telephone No.
 (Residence)
 Telegraphic Address (if any).....

PART I

Statement of total income during the 'previous year' ended.....

Source of income.	Amount of income profits & gains.	Tax already charged or deducted at source.
1	2	3
Section A.		
1. SALARIES.		
The total amount as detailed in Annexure 'A'.		
2. INTEREST ON SECURITIES.		
Interest from which tax has been deducted.		
Interest which is tax free		
3. PROPERTY.		
The total amount as detailed in Annexure 'B'.		
4. BUSINESS, PROFESSION OR VOCATION : (Details in Annexure 'C')		
(a) Profit and gain from own business.		
(b) Share of profits in a registered firm.		
(c) Share of profits in an unregistered firm or Association of persons.		
(d) Speculation Profits.		

1	2	3
5. OTHER SOURCES :		
(a) Dividends.		
(b) Interest on deposits, mortgages etc.		
(c) Sources other than those mentioned above. (Please give details).		
TOTAL OF SECTION A.		

NOTES : (1) Please attach only those annexures, duly filled in, which are applicable to you. For example, if you had no income from salary, you need not attach Annexure 'A'.

(2) IF YOU HAD ANY CAPITAL GAINS OR LOSSES DURING THE 'PREVIOUS YEAR', PLEASE GIVE THEIR AMOUNT AND DETAILS SEPARATELY ALONG WITH THIS RETURN.

SECTION—B.

IN THIS SECTION SHOULD BE SHOWN ANY INCOME-PROFITS OR GAINS WHICH ARE NOT INCLUDED IN SECTION 'A' BUT WHICH THE ASSESSEE CLAIMS TO BE NOT TAXABLE FOR REASONS STATED :

Particulars of items	Amount	Brief reasons for claiming the item to be not taxable
1.		
2.		
3.		
4.		
TOTAL		

PART—II

Statement of sums included in total income in respect of which tax rebate is admissible.

Items	Rs.
1. Contributions to Provident Fund	
2. Sums paid to effect an insurance on the life of the assessee or on the life of his wife, or her husband or in respect of a deferred annuity ; or in the case of a Hindu Undivided Family, to effect an insurance on the life of any male member or his wife (the original receipt or certificate from the insurance company must be attached).	
3. Share in the income of an unregistered firm or an association of persons where the tax has already been paid or is payable on the income by the firm or Association (give details).	
4. Other items, if any (give details).	
TOTAL	

PART III

(a) Statement of names and addresses of all persons, to whom, assessee had paid, in the previous year, rent, interest, commission, royalty or brokerage to any annuity (not being an annuity taxable under the head "Salaries") amounting to more than FOUR HUNDRED RUPEES and particulars of all such payments.

S.No.	Name and address of the person to whom the payment was made	Nature of payment	Amount of payment	Date of payment	Mode of payment (cash, cheque or book adjustment)
1	2	3	4	5	6
1					
2					
3					

(b) To be filled up in the case of Hindu Undivided Families only.

Name of family.

Address

S. No.	Name of adult members of family	Address
1		
2		
3		
4		
5		

DECLARATION

I declare that, to the best of my personal knowledge and belief, the information given in the above statements in Parts I, II and III of the Return and in the Annexures A, B, C and D thereto is true, correct and complete, that the amount of total income and other particulars shown are truly stated and relate to the year ended..... and that no other income occurred or arose or was received by

me**
the firm
the family during the said year and
the association
 source of income.

I**
the firm
the family had, during the said year, no other
the association.

2. I further declare that I** was resident in the taxable territories during the 'previous year'
the firm
the family
the association
 for which the Return is made.

**The alternative which are not required in the Declaration should be scored out.

3. I also declare that I was a married individual/widow/widower with unmarried

dependent children at the end of the 'previous year' for which the Return is made.

Dated..... @Signature.....
Status.....

A FALSE OR INCORRECT DECLARATION IS LIABLE TO PENALTIES PRESCRIBED UNDER SECTIONS 28 AND 52 OF THE INCOME TAX ACT, AND SECTIONS 177 AND 199 OF THE INDIAN PENAL CODE. THESE SECTIONS IN SO FAR AS THEY ARE RELEVANT ARE REPRODUCED AS FOLLOWS :

(a) INDIAN INCOME TAX ACT, 1922.

Section 28 (1) If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person.....

(a)

(b)

(c) has concealed the particular of his income or deliberately furnished inaccurate particulars of such income, he or it may direct that such person shall pay by way of penalty..... in the cases referred to in clauses (b) and (c), in addition to any tax payable by him, a sum not exceeding one and a half times the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income:

Section 52 If a person makes a statement in a verification mentioned in Section 19A or Section 21 or Section 22 or sub-section (2) of Section 26A or sub-section (3) of Section 30 or sub-section (3) of Section 33 which is false and which he either knows or believes to be false or does not believe to be true, he shall be punishable, on conviction before a Magistrate, with simple imprisonment which may extend to six months, or to one thousand rupees, or with both.

(b) INDIAN PENAL CODE :

Section 177 Whoever, being legally bound to furnish information of any subject to any public servant, as such, furnishes as true, information on the subject he knows or has reason to believe to be false shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both :

or, if the information which he is legally bound to give respects the commission of an offence or is required for the purpose of pre-

†This declaration is to be made in the case of an individual. In case the individual has dependent children, he should indicate their number.

@The declaration shall be signed :—

- (a) in the case of an individual by the individual himself.
- (b) in the case of a Hindu Undivided Family, by the Manager or Karta.
- (c) in the case of a firm, by a partner ; and
- (d) in the case of any other Association, by member of the Association.

venting the commission of an offence or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 199

Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any-point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

NOTE.—PLEASE FILL IN THE ANNEXURES WHICH ARE APPLICABLE TO YOU AND SEND THEM ALONG WITH THE RETURN FORM.

INCOME TAX RETURN FORM

ANNEXURE 'A'

INCOME FROM SALARIES

1. Name and address of the employer.
2. Total amount of salary, wages, annuities, pensions, gratuities, commission, bonus, fees and profits in lieu of salary and wages due to be paid, whether received or not. (Enclose a statement of monthly salary etc. and tax deductions therefrom)

Add :

- (a) Cash allowances
- (b) Value of perquisites, such as rent-free or concessional rent, furnished or unfurnished, accommodation, free conveyance, domestic or personal services, other benefit or amenity free or concessional rate provided by the employer. (Please give details of each perquisite and also basis of computation of value thereof)
- (c) Employer's contribution to recognised provident fund and interest credited to assessee's account

TOTAL SALARY

Less :

- (a) Accounts not taxable under clauses (vi) (vi-a), (xiv), (xiv-a) and (xv) of sub-section (3) of Section 4 or under clause (iii) of Explanation I to section 7(1) or Section 7(2) (i) or Section 7(2) (ii) of the Income-tax Act. (Give details)
- (b) Expenditure on own conveyance used in connection with employment. (Give details separately for running expenses and wear and tear claimed).

Net amount carried over to Part I Section A of the Return

Date

Signature

INCOME TAX RETURN FORM
ANNEXURE B
INCOME FROM PROPERTY

Name of the place and street and number of the Property*. (Distinguishing the property occupied by owner or let.)	Annual Municipal Value	Full annual rent payable by the tenant in case the property is let	Annual value
1	2	3	4
(a) .....			..
(b) .....			..
(c) .....			..
(d) .....			..
	TOTAL		..
Add : Owner's burden (of rates and taxes borne) by the tenants. (Give details)			..
Less : (a) Tenants' burden (of rates and taxes) borne by the owner. (Give details)			
(b) In case of property occupied by the owner for his own residence, half of annual value or Rs. 1800 whichever is less			..
Less :			
(a) 1/6th of 'X' for repairs			..
(b) Insurance premium			..
(c) Ground Rent			..
(d) Land Revenue			..
(e) Collection Charges (Give actual expenditure but subject to a maximum of six percent of annual value)			..
(f) Vacancies. (Give details of the period for which each property remained vacant)			..
Net income from property			..
Less : Claims irrecoverable Rent. (Give details)			..
Net amount carried over to Part I Section 'A' of the Return.			..

Date..... Signature.....

*If you are a part owner of any of these properties, Please state the extent of your ownership and also the names, addresses and extent of ownership of other owners.

INCOME TAX RETURN FORM

ANNEXURE 'C'

INCOME FROM BUSINESS, PROFESSION OR VOCATION

1. INCOME FROM SHARE OF PROFIT :

If there are more than one firm and or Association in which assessee is a partner or member, information for each may be given in the following form:

(a) REGISTERED FIRM.

Name and address of the firm.	Income-tax Circle in which the firm is assessed or is assessable.	Name of each partner including the assessee.	Residential address of each partner.	Share of each partner including interest on capital, commission or other remuneration, if any (Give details)

(b) UNREGISTERED FIRM OR ASSOCIATION OF PERSONS.

Name and address of the firm or Association of Persons.	Income-tax Circle in which the firm or Association of Persons is assessed or assessable.	Name of each partner or member including the assessee	Residential address of each partner or member.	Share of partner or member including salary, commission or other remuneration, if any (Give details).

(2) INCOME FROM OWN BUSINESS :

- (1) (a) Name in which the business, profession or vocation is carried on
- (b) Principal place of business, profession or vocation
- (c) Location and style of branches, if any
1.
2.

NOTE—PLEASE ENCLOSE A COPY EACH OF YOUR PERSONAL CAPITAL AND CURRENT ACCOUNTS AND ANY OTHER ACCOUNTS BELONGING TO YOU ALTHOUGH STANDING IN ANY OTHER NAME IN THE FIRM AND/OR ASSOCIATION'S ACCOUNTS.

J Please state :—

1. What books of account, if any, were kept by or on behalf of the assessee for the 'previous year' ended.
2. By whom were those books of account kept; (State name and address).
3. Is the return in accordance with those books ?
4. If the return is not in accordance with those books, on what basis and upon what information has the return been prepared ?

(2) If the accounts are kept on the mercantile accountancy or book profit system, a copy of the manufacturing accounts or trading accounts, the Profit and Loss Accounts and Balance Sheet or Trial Balances must be attached to this Return. If the accounts are kept on any other system, the name or description of the system is to be stated and a copy of any statement which corresponds to the Profit and Loss Account and Balance Sheet in the mercantile Accountancy system must be attached to this Return.

(3) (4) Profit or loss as per Profit and Loss Accounts (or statement corresponding to Profit and Loss Account) for the year ended

Rs.

4 Id : (Deduct if the above figures is loss)

(a) Expenses which are not allowable under the provisions of sec. 10 of the Income-tax Act, 1922.

e.g.,

(i) Reserves for bad debts Rs.

(ii) Charity or presents. Rs.

(iii) Capital expenditure Rs.

(iv) Income-tax or Super-tax Rs.

(v) Drawings of proprietor or partners. Rs.

(vi) Salaries, interest and commission paid or credited to the proprietor or partners Rs.

(vii) Cost of alterations in or additions, extensions or improvements to any of the assets of business, profession or vocation Rs.

(viii) Private and personal expenses Rs.

(ix) Any other expenditure not wholly and exclusively laid out for the purpose of the business, profession or vocation and not allowable under Section 10 Rs.

Rs.

(b) Depreciation—considered separately Rs.

(c) Development rebate—Considered separately. Rs.

(d) Losses sustained in former years and charged in arriving at the figure of profit or loss shown above. Rs.

(e) Loss in speculation business—Considered separately. Rs.

(f) Other adjustments, if necessary Rs.

TOTAL Rs. c/o.

B.F. Rs. ||Rs.

Deduct : (Add, if the above figure is a loss)

(a) Income from properties, Dividends, Interest
on Securities, Capital gains, etc., considered
separately (Give details) Rs.

(b) Profit in speculation business considered separately. Rs.

(c) Depreciation allowable as shown in Annexure
D. Rs.

(d) Development rebate as shown in Annexure D. Rs.

(e) Expenses which are allowable under the pro-
visions of Section 10 of Income-tax Act,
1922, (if not charged in arriving at the above
figures) (Give details).. . . . Rs.

(f) Other adjustments, if any. (Give details). Rs.
Rs.

Profit (or loss) carried over to Part I Section
B of the Return.

(B) Profit or loss in Speculation Business Rs. Rs.

Deduct : (Add if the above figure is a loss)

Loss in speculation business brought forward
under Section 24(2) Rs.

Profit (or loss) carried over to Part I Section 'A'
of the Return. Rs.

Signature.....

Date

NOTE.—Compute net assessable profit or loss in respect of each business separately in the
above form and carry over the consolidated figure to Part-I, Section A of the Return.

INCOME TAX RETURN FORM

ANNEXURE 'D'

DEPRECIATION AND DEVELOPMENT REBATE

Statement of particulars for arriving at the amount of Depreciation and Development Rebate Allowable.

	Buildings	Machinery and plant	Furniture
A DEPRECIATION			
1. Description of the asset.
2. Written down values as at the beginning of the accounting period
3. Capital expenditure during the year for additions, alterations, improvements and extensions (Give dates on which additions, etc., made).			
4. If a Plant or building or furniture has been sold or discarded during the year, show in this column the written down value as at the beginning of the accounting period and the value for which it is actually sold or its scrapvalue.
5. Amount on which depreciation is now allowable.
6. Prescribed rate percent.			
7. No. of months of user of the asset (give details of double shift working separately).			
8. <i>Depreciation Claimed.</i>			
(a) Normal			
(b) Extra shift allowance			
(c) Total carried over to Annexure 'C'			

B.—DEVELOPMENT REBATE

1. Description of new machinery or plant installed. Rs.
2. Date of installation and the bringing into use. Rs.
3. Actual cost of new machinery and plant installed. Rs.
4. Amount of Rebate 42½% of the cost ; in (col. 3 above) carried over to Annexure 'C' Rs.
5. Amount debited to Profit and Loss account and credited to Reserve account. Rs.

Signature

Date.....

APPENDIX—VI

(b) STATEMENT OF TOTAL WEALTH

(Assets minus liabilities)

[See chapter 2, paragraph 2.29]

Of Shri. an individual
Karta of H.U.F.
Address
as at
Income-tax Circle/Ward/District G.L.R. No.

PART I. *Wealth as per Account Books of Businesses.*

Name and style under which and the address at which the business is carried on.	Extent of proprietary interest.	Balances as per various Current/ Suspense/Reserve/Capital Account, Batta Khata, etc., owned by you in any name whatsoever. (Give separate details for each account).
---	---------------------------------	---

1

2

3

(i)

(ii)

(iii)

TOTAL

NOTE.— Copies of Trial Balance or Balance Sheet for each business should be attached

PART II. *Assets outside the Account Books of the Business.*

(A) *Immovable property* (Landed and/or House Property held in own and/or any other name)

Description of various items.	Date of acquisition	Cost, if purchased.	Cost of subsequent additions and improvements from the date of acquisition of statement.	Total cost (3 + 4)	Remarks
1	2	3	4	5	6
(i)					
(ii)					
(iii)					
TOTAL.					

Important Notes

- (1) If any of the assets not belonging to business have been shown in Part I above as they are entered in account books of business, they may not be reported here.
- (2) If any of the properties is mortgaged, please indicate in the 'Remarks' column, with whom it is mortgaged and for what amount.
- (3) Also indicate in the 'Remarks' column whether the total cost has fully or in part been debited to any of the accounts in the account books, and if so, on what dates.

B) Moveable property :

- i) Balances in account with Banks. Fixed, Current, Savings, C. D., etc., including P.O. Saving Bank account held in own or other names and addresses of the banks, the types of accounts and the names in which the accounts are maintained.
- ii) Securities, loans and debentures (including Treasury Bills, Prize Bonds, Bearer Bonds, etc.) held in own or any other name whatever.
- iii) Deposits, advances and loans with Government Companies, firms, individuals etc., either in own or any other name.
- iv) Shares in Joint Stock Companies
- v) Cash (outside the account books but including cash kept with self and any family member and in any locker or anywhere else).
- vi) Bullion, ornaments, jewellery
- vii) Total premia paid in respect of insurance or annuity policy and any other policy, year in which taken and annual premium payable.
- viii) Any other assets, not specified above.

TOTAL OF PART II (A + B)

(X)

TOTAL ASSETS (I + II)

PART III :— *Liabilities outside the books.*

Name and present address of lender.	Date and amount of loan.	Balance of loan due on date of this statement.	Nature of security given and rate of interest.
1	2	3	4
(i)			
(ii)			
(iii)			

Total Liabilities :

(Y)

PART IV.—NET WEALTH (X—Y)

Part. V. *Brief details of expenditure.*

- (i) Did you maintain any conveyance (motor car or motor cycle) during the past four years? If so, please state its make and average monthly expenditure.
- (ii) What is your average monthly expenditure?
- (iii) Did you incur any expenditure during the last four years in any marriages, or other ceremonies? If so, please indicate the ceremonies and the extent of the expenditure at each.

DECLARATION

I declare that to the best of my knowledge and belief, the information given in the above statement is correct and complete.

Date

Signature

APPENDIX—VI

(See Chapter 2, Paragraph 2.29)

(c) ASSESSMENT FORM

CIRCLE CODE No.

Assessment for 19.....19under Section 23(1) of the Indian
Income-tax Act, 1922.

Name of assessee.

District or Area.

Address.

G.I.R. No.

Accounting period(s)

Nature of business (es)

Whether : *Resident and ordinarily resident* / *Resident but not ordinarily resident* / *Non-resident*.

The assessee filed the return of income on..... The total income is assessed
as under :—

PART I—COMPUTATION OF INCOME

Detailed sources of income	Amount of income	Income-tax already deducted or therwise paid at source.	Code No.*
----------------------------	---------------------	---	-----------

Rs.

1. Salaries
2. Interest on Securities
3. Property
4. Business, Profession or Vocation
5. Other Sources (in the case of dividends
the gross amount liable to tax and the
appropriate tax should be shown)
 - (i) Dividend
 - (ii) Interest on deposits etc.
 - (iii) Others

TOTAL INCOME AND TAX DEDUCTED OR
PAID AT SOURCE.

*Entry under this column may be made only in the Office copy.

**PART II—SUMS INCLUDED ON TOTAL INCOME IN RESPECT OF WHICH
INCOME TAX IS NOT PAYABLE.**

Items upon which relief is due

Amount

- (a) Under Section 7 or on account of Provident Fund.
- (b) On account of Insurance Premium
- (c) Share from association of persons or from unregistered firm on the profits of which tax has already been paid or partnership profit from registered firm charged to tax in the hands of the firm under the second proviso to Section 23(5)(a).
- (d) Other items

TOTAL

PART III

COMPUTATION OF TAX.

Gross Income-tax payable on Total income (A)

Deduct *Income-tax.*

Tax deducted or otherwise paid at source (See Part I

Proportionate tax on the total amount upon which relief is due
(See Part II).

TOTAL

Net amount of tax payable
refundable
(in figures)

Issue Demand Notice for Rs.....and Chalan.

Date :

Income-tax Officer.
(Office Seal)

APPENDIX VI

(See Chapter 2, paragraph 2.30)

(d) Notice under Section 23(2) and 22(4) of Indian Income-tax Act, 1922.

Income-tax Circle/Ward/District.....

Place

G.I.R. No. Office Address

Dated, the.....19

To

.....

.....

Dear Sir/Madam,

In connection with the assessment for the tax year 19....19...., you have made a return under Section 22(1)/22(2) of Indian Income-tax Act, 1922 (Act XI of 1922). There are certain points, in connection with this return, in regard to which I should like some further information. I shall be obliged therefore, if you attend my office at the above address on.... at.....either in person or by a representative duly authorised in writing in this behalf, or produce or cause to be produced at the said time any documents, accounts and other evidence on which your return has been based.

2. In particular, will you be good enough to produce or cause to be produced on the date and at the time mentioned in para 1, the accounts and/or documents specified as under :

- | | |
|----|----|
| 1. | 4. |
| 2. | 5. |
| 3. | 6. |

3. I may mention here that failure on the part of an assessee to comply with the terms of this notice will result in an *ex parte* assessment to the best of the Income-tax Officer's judgment and it may further entail a penalty or even prosecution.

Yours faithfully,
Income-tax Officer,
(Office Seal)

Statement showing distribution of staff in various Commissioners' charges as on 1st April 1959.

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10. Delhi and Rajasthan.	New Delhi	1	—	5	7	25	15	78	7	84	6	13	31	355	253	—	15	129	105	357	1604
11. Kerala and Coimbatore	Coimbatore	—	1	3	3	9	7	29	6	35	2	5	21	143	92	1	5	45	54	146	652
12. Madhya Pradesh, Nagpur and Bhandara.	Nagpur	—	1	3	5	10	12	33	5	44	2	6	22	171	121	1	9	58	50	161	769
13. Madras	Madras	1	—	4	6	24	22	50	8	63	3	14	31	307	212	1	10	92	88	280	312
14. Mysore	Banglore	—	1	2	3	11	13	30	5	38	2	6	19	163	101	1	6	53	50	172	730
15. Punjab, Himachal Pradesh and Jammu and Kashmir.	Simla	—	1	3	5	13	14	47	12	58	3	15	21	233	157	—	9	71	67	257	1060
16. Uttar Pradesh	Lucknow	1	—	5	10	23	25	65	10	78	3	17	29	320	249	1	18	125	119	405	1616
17. West Bengal	Calcutta	1	1	16	13	48	50	182	20	185	17	42	75	831	518	1	35	259	236	857	3667
18. Calcutta																					
GRAND TOTAL		7	11	73	96	325	298	836	124	990	74	183	427	4498	3008	13	200	1470	1268	4457	19817
		18				1459		1114		257					213						

NOTE : Figures given in the statement represent the sanctioned strength.

t
D

APPENDIX X

*Statement showing the total revenues of the Central Government and revenues from direct taxes during
1953-54 to 1959-60*

(Figures in lakhs of rupees)

Year	Total Central Revenue	Corporat- ion tax	Taxes on income	Estate Duty	Taxes on wealth	Expen- diture tax	Gift tax	Total direct taxes
1	2	3	4	5	6	7	8	9
1953-54	4,73,17	41,54	1,22,84	..	..	..	..	1,64,38
1954-55	5,12,65	37,33	1,22,26	81	..	..	..	1,60,40
1955-56	5,61,35	37,04	1,31,36	1,81	..	..	.	1,70,21
1956-57	6,51,12	51,18	1,51,74	2,11	..	..	..	2,05,03
1957-58 (Accounts)	8,06,04	56,13	1,63,70	2,30	7,04	..	..	2,29,17
1958-59 (Revised)	8,17,27	56,00	1,62,50	2,50	10,00	1,00	1,20	2,33,20
1959-60 (Budget)	8,75,80	58,75	1,66,25	2,85	13,00	1,00	1,20	2,43,05

Source : Budget Memoranda.

NOTE. — Figures in all the categories include States' share.

APPENDIX XI

Statement showing total number of assessments completed, total income assessed and total tax

Grade of total income	1953-54			1954-55		
	No. of assessments	Total income assessed	I.T., S.T. & S.C. etc.	No. of assessments	Total income assessed	I.T., S.T. & S.C., etc.
		Rs.	Rs.		Rs.	Rs.
0—5,000	1,57,619	6,319	157	1,31,588	5,371	132
5,001—10,000	2,01,165	14,166	522	2,12,039	1,50,70	559
10,001—25,000	1,07,542	16,131	1,406	1,13,568	16,928	1,435
25,001—50,000	28,460	9,986	2,278	27,842	9,731	2,183
50,001—100,000	6,655	4,763	1,852	5,889	4,232	1,635
100,001—200,000	2,687	3,670	1,858	2,590	3,530	1,765
200,001—& over	2,268	23,091	10,971	2,204	21,104	10,038
TOTAL	5,06,396	78,216	19,044	4,95,720	75,966	17,747

demanded (including surcharge) according to selected grades of income during the years 1953-54 to 1957-58*

(Rupees in Lakhs)

1955-56			1956-57			1957-58		
No. of assessments	Total income assessed	I.T., S.T. & S.C. etc.	No. of assessments	Total income assessed	I.T., S.T. & S.C. etc.	No. of assessments	Total income assessed	I.T., S.T. & S.C. etc.
	Rs.	Rs.		Rs.	Rs.		Rs.	Rs.
1,31,964	5,491	135	1,29,155	5,189	131	1,76,879	7,203	134
2,32,643	16,463	596	2,61,416	18,324	646	2,87,148	19,953	651
1,23,221	18,204	1,587	1,38,543	20,625	1,869	1,51,569	22,584	2,016
27,135	9,168	2,091	32,260	11,118	2,416	36,658	12,697	2,687
8,017	5,396	2,116	12,256	8,262	2,493	14,285	9,631	2,728
2,522	3,416	1,757	3,572	4,846	2,024	4,183	5,641	2,233
2,235	20,353	9,910	2,700	25,207	12,079	2,556	23,343	11,767
5,27,737	78,490	18,192	5,79,902	93,571	21,658	6,73,378	1,01,052	22,216

Source : All India Statement No. 5 of all India Income-tax Revenue statistics.

APPENDIX XII

Statement showing total number of assessments completed total income assessed and total tax demanded

1953-54						
Grade of total income	Individual			Hindu undivided families		
	No. of assessments	Total income assessed	Total tax (i.e., I.T., ST & S.C.)	No. of assessments	Total income assessed	Total tax (i.e., I.T., S.T. & S.C.)
		Rs.	Rs.		Rs.	Rs.
0---5,000	1,46,983	3,735	127	2,830	115	2
5,001---10,000	1,77,615	6,766	431	15,052	1,208	38
10,001---25,000	85,666	5,474	1,049	16,015	2,395	191
25,001---50,000	22,172	3,010	1,684	3,808	1,326	281
50,001---1,00,000	4,680	1,004	1,268	737	526	194
1,00,001---2,00,000	1,558	559	1,142	287	386	201
2,00,001 and over	666	632	1,821	118	463	324
TOTAL	4,39,340	21,180	7,522	38,847	6,419	1,231

(including surcharge) according to the selected grades of income and classes of assesseees for the year
1953-54 to 1957-58

(Rupees in Lakhs)

1953-54								
Unregistered firms and other association of persons			Companies and other concerns assessable at company rate			Total		
No. of assess-ments	Total income assessed	Total tax (i.e., I.T., S.T., & S.C.)	No. of assess-ments	Total income assessed	Total tax (i.e., I.T., S.T., & S.C.)	No. of assess-ments	Total income assessed	Total Tax
	Rs.	Rs.		Rs.	Rs.		Rs.	R s.
4,950	206	5	2,856	52	21	1,57,619	6,319	157
7,353	522	20	1,145	84	34	2,01,165	14,166	522
4,263	651	57	1,598	264	111	1,07,542	16,131	1,406
1,144	407	88	1,336	510	224	28,460	9,986	2,278
345	252	91	893	665	300	6,655	4,763	1,852
132	178	86	710	998	428	2,687	3,670	1,858
89	457	308	1,395	19,423	8,518	2,268	23,091	10,971
18,276	2,673	655	9,933	21,996	9,636	5,06,396	78,126	19,044

(Continued.....)

APPENDIX XII—*contd.*

1954—55						
Grades of total income	Individuals			Hindu Undivided families		
	No. of assessments	Total income assessed	Total tax	No. of assessments	Total income assessed	Total tax
		Rs.	Rs.		Rs.	Rs.
0—5,000 .	1,21,140	4,995	105	2,373	100	2
5,001—10,000 .	1,86,898	13,116	466	15,133	1,243	38
10,001—25,000 .	90,185	13,433	1,080	17,040	2,519	198
25,001—50,000 .	21,847	7,622	1,647	3,583	1,230	252
50,001—1,00,000 .	4,126	2,942	1,129	616	437	158
1,00,001—2,00,000 .	1,558	2,089	1,116	229	314	157
2,00,001 and over .	657	2,726	1,754	109	502	295
TOTAL .	4,26,411	46,923	7,297	39,083	6,345	1,100

1955—56						
Grade of Total income	Individuals			Hindu undivided families		
	No. of assessments	Total income assessed	Total tax	No. of assessments	Total income	Total tax
		Rs.	Rs.		Rs.	Rs.
0—5,000 .	1,20,061	5,061	103	2,580	111	2
5,001—10,000 .	2,06,089	14,416	495	15,333	1,251	37
10,001—25,000 .	98,932	14,564	1,198	17,411	2,587	213
25,001—50,000 .	21,554	7,273	1,587	3,240	1,078	232
50,001—1,00,000 .	5,920	3,950	1,528	779	516	197
1,00,001—2,00,000 .	1,486	1,982	1,085	203	278	147
2,00,001 and over .	653	2,807	1,944	87	404	276
TOTAL .	4,54,695	50,053	7,940	39,633	6,225	1,104

1954-55

(Rupees in Lakhs)

Unregistered firms & other associa- tions of persons			Companies and other concerns assessable at company rate			Total		
No. of assess- ments	Total income assess- ed	Total tax	No. of assess- ments	Total income assess- ed	Total tax	No. of assess- ments	Total income assess- ed	Total tax
	Rs.	Rs.		Rs.	Rs.		Rs.	Rs.
5,168	223	5	2,907	52	21	1,31,588	5,371	132
8,916	631	23	1,092	80	32	2,12,039	15,070	559
4,912	740	61	1,431	236	97	1,13,568	16,928	1,435
1,220	425	89	1,192	454	195	27,842	9,731	2,183
321	232	82	826	621	267	5,889	4,232	1,635
135	190	87	668	938	405	2,590	3,530	1,765
99	503	325	1,339	17,373	7,662	2,204	21,104	10,038
20,771	2,944	672	9,455	19,754	8,679	4,95,720	75,966	17,747

1955-56

(Rupees in Lakhs)

Unregistered firms and other associa- tion of persons			Companies and other concerns assessable at company rate			Total		
No. of assess- ments	Total income assessed	Total tax	No. of assess- ments	Total income assessed	Total tax	No. of assess- ments	Total income assessed	Total tax
	Rs	Rs.		Rs.	Rs.		Rs.	Rs.
5,984	259	6	3,339	58	24	1,31,964	5,491	135
9,990	706	27	1,231	91	38	2,32,643	16,463	596
5,345	798	69	1,533	255	107	1,23,221	18,204	1,587
1,176	398	87	1,165	418	184	27,135	9,168	2,091
391	271	100	927	658	290	8,017	5,396	2,116
157	215	110	676	941	416	2,522	3,416	1,757
105	750	502	1,390	16,393	7,187	2,235	20,353	9,910
23,148	3,397	901	10,261	18,814	8,246	5,27,737	784,90	18,192

(Continued...)

APPENDIX XII—*contd.*

1956-57									
Grade of total income	Individuals			H.U.Fs.			U.R.F. and other association of persons		
	No. of assessments	Total income assessed	Total tax (i.e. I. T.S.T. & S.C.)	No. of assessments	Total income assessed	Total tax	No. of assessments	Total income assessed	Total tax
		Rs.	Rs.		Rs.	Rs.		Rs.	Rs.
0—5,000	1,17,625	4,769	98	2,345	101	2	6,071	262	7
5,001—10,000	2,36,151	16,386	545	14,215	1,152	54	9,843	697	28
10,001—25,000	1,12,965	16,766	1,440	18,381	2,753	232	5,529	832	77
25,001—50,000	24,154	8,145	1,844	3,441	1,140	256	1,310	445	102
50,001—1,00,000	6,544	4,359	1,739	839	554	214	448	314	122
1,00,001—2,00,000	1,532	2,050	1,179	194	262	146	146	203	107
2,00,001 & over	650	2,708	1,912	77	378	219	111	516	348
TOTAL	4,99,621	55,183	8,757	39,492	6,340	1,103	23,458	3,269	791

1957-58								
	Individuals			Hindu undivided families			Unregistered firms & other association of persons	
	No. of assessments	Total income assessed	Total tax	No. of assessments	Total income assessed	Total tax	No. of assessments	Total income assessed
		Rs.	Rs.		Rs.	Rs.		Rs.
0—5,000	1,61,251	6,624	96	3,192	136	2	9,335	387
5,001—10,000	2,49,485	17,142	524	25,244	1,934	53	11,193	788
10,001—25,000	1,22,941	18,293	1,538	21,117	3,140	258	5,751	859
25,001—50,000	27,219	9,175	2,046	3,888	1,291	288	12,65	435
50,001—1,00,000	6,992	4,658	1,868	888	588	231	454	311
1,00,001—2,00,000	1,663	2,223	1,283	195	259	146	183	252
2,00,001 and over	621	2,387	1,677	84	366	254	98	415
TOTAL	5,70,172	60,502	9,032	54,608	7,714	1,232	28,279	3,447

1956-57						(Rupees in Lakhs)		
Registered firms			Companies and other concerns assessable at company rates			Total		
No. of assessments	Total income assessed	Total tax	No. of assessments	Total income assessed	Total tax	No. of assessments	Total income assessed	Total tax
	Rs.	Rs.		Rs.	Rs.		Rs.	Rs.
..	..	..	3,114	57	24	1,29,155	5,189	131
..	..	..	1,207	88	38	2,61,416	18,324	646
..	..	..	1,668	274	120	1,38,543	20,625	1,869
2,108	939	5	1,247	449	210	32,260	11,118	2,416
3,320	2,250	45	1,105	785	372	12,256	8,262	2,493
899	1,195	49	801	1,137	543	3,572	4,846	2,024
224	802	58	1,638	20,803	9,542	2,700	25,207	12,079
6,551	5,186	157	10,780	23,593	10,849	5,79,902	93,571	21,658

1957-58						(Rupees in Lakhs)		
Registered firms				Companies and other concerns assessable at company rate			Total	
Total tax	No. of assessments	Total income assessed	Total tax	No. of assessments	Total income assessed	Total tax	No. of assessments	Total income assessed
Rs.		Rs.	Rs.		Rs.	Rs.	Rs.	Rs.
9	..	..	..	3,101	57	27	1,76,879	7,203
31	..	..	..	1,226	90	43	2,87,148	19,953
78	..	..	..	1,760	292	143	1,51,569	22,584
99	2,938	1,310	7	1,348	487	246	36,658	12,697
114	4,735	3,194	66	1,216	880	449	14,285	9,631
125	1,305	1,726	70	837	1,180	609	4,183	5,641
220	352	1,189	82	1,501	18,984	9,534	2,656	23,343
676	9,330	7,419	225	10,989	21,970	11,051	6,73,378	1,01,052
								22,216

Source : All India Statement No. 5 of the All-India Income-tax Revenue Statistics.

APPENDIX—XIII

Statement showing number of assessments completed, total income assessed and total tax

Classification	Number of assessments				
	1953-54	1954-55	1955-56	1956-57	1957-58
1. Forestry, Mining and Quarrying	3,725	3,714	3,958	4,909	4,860
2. Primary industries and processing and manufacturing of food-stuffs	9,060	9,147	9,355	11,333	11,491
3. Processing and manufacturing—Textiles and Leather and products thereof	7,527	8,134	8,537	10,524	10,865
4. Processing and manufacturing—Metals and chemicals and products thereof	7,451	7,092	7,768	10,324	11,113
5. Processing and manufacturing—Cement, rubber, paper and other mineral products	8,909	9,182	10,100	12,626	12,972
6. Construction and utilities	8,688	9,681	11,483	12,304	13,484
7. Commerce, Transport and Communications	1,48,464	1,52,887	1,66,636	1,84,335	2,45,652
8. Finance	33,205	32,443	32,418	40,523	40,197
9. Professions	30,223	30,074	33,312	37,169	31,507
TOTAL :	2,57,252	2,62,354	2,83,567	3,24,597	3,82,141

Source : All India statement No. 4 of All India Income-tax Revenue Statistics.

demanded (including surcharge) according to the different types of business and professional income during the years 1953-54 to 1957-58.

Total income assessed. (In lakhs)					Total tax (Income-tax and Super-tax) (In lakhs)				
1953-54	1954-55	1955-56	1956-57	1957-58	1953-54	1954-55	1955-56	1956-57	1957-58
Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.	Rs.
2,898	1,904	1,791	1,994	1,698	1,336	868	810	820	739
3,633	2,984	4,422	4,575	4,323	1,563	1,247	2,091	2,006	1,964
3,786	4,029	3,819	5,542	3,519	1,752	1,898	1,755	2,687	1,700
3,715	2,290	2,983	4,413	4,949	1,722	946	1,329	2,148	2,563
2,210	2,256	2,143	2,880	2,391	831	859	790	1,131	913
1,348	1,467	1,691	2,121	2,240	343	361	413	528	605
18,565	19,277	19,899	24,531	29,006	4,082	4,184	4,182	4,708	5,347
6,396	5,896	5,375	8,037	7,077	2,282	2,031	1,840	2,793	2,498
2,975	2,798	3,089	3,461	2,889	580	505	586	548	450
45,526	42,901	45,212	57,474	58,092	14,491	12,899	13,796	17,370	16,779

APPENDIX XIV (a)

Statement showing the analysis of assessment work under the different direct taxes Acts in the various Commissioner's charges for the year ending 31-3-1959.

(a) Assessments under the Income-tax Act, categorywise.*

Serial No.	Charge	No. of cases on General Index Register as on 31-3-1959.					No. of cases for disposal						
		Cat. I	Cat. II	Cat. III	Cat. IV	Cat. V	Total	Cat. I	Cat. II	Cat. III	Cat. IV	Cat. V	Total
1.	Andhra Pradesh	3294	9701	15532	9535	20338	58400	5791	13957	21549	13090	30049	84436
2.	Assam, Manipur, & Tripura,	1168	2158	3763	4421	9708	21228	2703	4064	6155	6780	13421	33123
3.	Bihar & Orissa	2182	5408	7453	10650	11505	37198	3157	6797	8949	14184	12654	45741
4.	Bombay Central	321	31	18	79	84	533	1610	98	55	398	459	2620
5.	Bombay City I }	11986	17922	22478	43963	38072	134421	19048	25046	32109	66291	56829	199323
6.	" " II }												
7.	Bombay North	6517	17010	27112	30166	29120	109925	12648	26237	41152	49829	47457	177323
8.	Bombay South	2504	7078	12301	10860	25210	57953	4169	10845	18763	17091	39601	90469
9.	Calcutta Central	620	..	..	..	..	620	3413	..	..	..	..	3413
10.	Delhi & Rajasthan	3972	9958	18979	15448	28695	77052	10161	20477	38101	29734	56304	154775
11.	Kerala & Coimbatore	2117	3983	6144	6707	10514	29465	2903	5166	8527	9049	14584	40229
12.	Madhya Pradesh Nagpur & Bhandara	2205	6523	12179	13312	14194	48418	4662	11569	20254	20922	22122	79539
13.	Madras	5113	10666	13655	8958	33438	71890	6357	12304	16581	10819	38752	84813
14.	Mysore	2290	6035	9244	1586	15728	44883	3763	8920	14094	17150	23212	67139
15.	Punjab Himachal Pradesh, and Jammu & Kashmir	2518	8194	16202	13872	16087	56873	5173	13521	26642	23517	26445	95298

16. Uttar Pradesh	4279	13096	22517	15527	27599	83018	6884	17160	28567	19702	31003	103316
17. West Bengal	9941	13623	23398	36586	66852	150400	26059	32092	52191	78231	137106	325679
18. Calcutta												
TOTAL	61087	131401	210975	231670	347144	982277	118501	208253	333689	376787	549998	1587228

(Continued....)

APPENDIX XIV (a) (Continued.....)

Serial No.	Charge	No. of cases disposed of					No. of cases pending as on 31-3-1959						
		Cat. I	Cat. II	Cat. III	Cat. IV	Cat. V	Total	Cat. I	Cat. II	Cat. III	Cat. IV	Cat. V	Total
1.	Andhra Pradesh	4465	12107	18994	11062	25533	72161	1326	1850	2555	2028	4516	12275
2.	Assam, Manipur & Tripura	1380	1987	3217	2873	9020	18477	1323	2077	2938	3907	4401	14646
3.	Bihar & Orissa	2522	5811	8000	11834	11405	39572	635	986	949	2350	1249	6169
4.	Bombay Central	635	48	22	142	197	1044	975	50	33	256	262	1576
5.	Bombay City I }	15446	21096	27481	51902	45402	161327	3602	3950	4628	14389	11427	37996
6.	Bombay City II }												
7.	Bombay North	9080	19945	32513	36857	33482	131877	3568	6292	8639	12972	13975	45446
8.	Bombay South	3247	8526	14022	10887	22431	59113	922	2319	4741	6204	717	31356
9.	Calcutta Central	1341	..	..	..	..	1341	2072	..	..	..	..	2072
10.	Delhi & Rajasthan	5354	13194	24488	17728	31727	92491	4807	7283	13613	12006	24577	62286
11.	Kerala & Coimbatore	2348	4242	7310	7696	11434	33030	555	924	1217	1353	3150	7199
12.	Madhya Pradesh Nagpur & Bhandara	2528	7408	13451	11850	14588	49825	2134	4161	6803	9072	7534	29704
13.	Madras	5392	11075	14984	9762	34116	75329	965	1229	1597	1057	4636	9484
14.	Mysore	2828	6975	10856	11968	14899	47526	935	1945	3238	5182	8313	19613

15. Punjab, Himachal Pradesh and Jammu & Kashmir	3171	8828	15522	12003	16472	55996	2002	4693	11120	11514	9973	39302
16. Uttar Pradesh	5447	15429	26505	18040	29043	94464	1437	1731	2062	1662	1960	8852
17. West Bengal	14764	18750	33750	47974	82545	197783	11295	13342	18441	30257	54561	127896
18. Calcutta												
TOTAL	79948	155421	251115	262578	382294	1131356	38553	52832	82574	114209	167704	455872

* Assessments under the Income-tax Act are classified into the following five categories :—

- Cat. I—Cases with business income over Rs. 25,000
- Cat. II—Cases with business income between Rs. 10,000 and 25,000
- Cat. III—Cases with business income between Rs. 5,000 and 10,000
- Cat. IV—Cases with business income upto Rs. 5,000
- Cat. V—All salary, Refund and 'No assessment' cases

APPENDIX XIV (b)

Statement showing the analysis of assessment work under the different direct taxes Acts in the various Commissioner's charges for the year ending 31-3-59.
 (b) Assessments—under Estate Duty, Wealth tax, Expenditure and Gift Acts.

Serial No.	Charge	Estate Duty Cases			Wealth Tax Cases			Expenditure tax Cases			Gift tax Cases		
		For disposal	Balance of		For disposal	Balance of		For disposal	Balance of		For disposal	Balance of	
1	2	3	4	5	6	7	8	9	10	11	12	13	14
1.	Andhra Pradesh	638	375	263	2,930	2,222	708	315	264	51	2,382	1,560	822
2.	Assam, Manipur and Tripura	116	103	13	695	313	382	174	148	26	32	26	6
3.	Bihar and Orissa	619	463	156	1,501	1,190	311	234	169	65	86	75	11
4.	Bombay Central	14	10	4	548	319	229	181	78	103	21	20	1
5.	Bombay City-I	1,425	1,206	219	12,458	11,863	595	2,140	2,032	108	679	629	50
6.	Bombay City-II												
7.	Bombay North	1,243	992	251	7,886	7,009	277	573	523	50	344	333	11
8.	Bombay South	450	366	84	2,139	1,732	407	124	99	25	135	101	34
9.	Calcutta (Central)	..	..	..	485	171	314	93	15	78	5	1	4
10.	Delhi & Rajasthan	568	232	336	4,004	1,334	2,670	268	64	204	101	18	83
11.	Kerala & Coimbatore	517	462	55	1,776	1,446	330	428	244	184	423	167	256
12.	Madhya Pradesh, Nagpur & Bhandara	503	198	305	2,196	704	1,492	260	52	208	114	42	72
13.	Madras	912	813	99	3,139	2,753	386	566	437	129	660	437	223

14. Mysore	.	.	.	.	.	452	319	133	2,570	2,037	533	282	112	170	163	111	52
15. Punjab, Himachal Pradesh and Jammu & Kashmir	.	.	.	.	.	540	347	193	1,890	1,221	669	75	41	34	690	260	430
16. Uttar Pradesh	.	.	.	.	.	648	467	181	2,204	1,932	272	225	176	49	223	176	47
17. West Bengal	.	.	.	.	.	2,134	1,311	1,823	10,846	7,631	3,215	1,836	1,314	522	981	822	159
18. Calcutta	.	.	.	.	.							
TOTAL	.	.	.	.	.	10,779	7,664	3,115	56,667	44,077	12,590	7,774	5,768	2,006	7,039	4,778	2,261

APPENDIX XV

Statement showing the revenue from the direct taxes collected in the various Commissioners' charges for the year ending 31-3-59.

(Figures in thousands)

S.No.	Charge	Taxes on income in- cluding Cor- poration tax	Estate Duty	Wealth Tax	Expenditure Tax	Gift Tax	Total
1	2	3	4	5	6	7	8
1.	Andhra Pradesh	.	.	.	1,190	1,531	60,922
2.	Assam, Manipur & Tripura	.	.	.	36	24	20,346
3.	Bihar & Orissa	.	.	.	44	105	45,678
4.	Bombay Central	.	.	.	23	139	30,139
5.	Bombay City I	.	.	.			
6.	Bombay City II	.	.	.	1,585	2,621	6,87,747
7.	Bombay North	.	.	.	653	1,453	1,40,268
8.	Bombay South	.	.	.	207	219	37,064
9.	Calcutta Central	.	.	.	..	5	1,66,079
10.	Delhi & Rajasthan	.	.	.	555	285	1,12,948
11.	Kerala & Coimbatore	.	.	.	234	404	61,169
12.	Madhya Pradesh, Nagpur and Bhandara	.	.	.	474	216	55,094
13.	Madras	.	.	.	161	779	1,44,347
14.	Mysore	.	.	.	633	229	57,647

DIRECT TAXES ADMINISTRATION ENQUIRY
COMMITTEE

Memorandum
of
Dissent, Comments and Recommendations
by
SHRI G. P. KAPADIA

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DIRECT TAXES ADMINISTRATION ENQUIRY COMMITTEE

Memorandum of Dissent, Comments and Recommendations.
By SHRI G. P. KAPADIA.

CHAPTER I

Introductory observations, Fundamental issues and Integrated Tax Structure.

I have participated in the discussions with my colleagues and we have taken numerous unanimous decisions in respect of which I have given my full contribution. But, I have fundamental differences over certain matters and the basic approach to be made to the various issues. In respect of some issues, my reasons for coming to the same conclusion are different and while the majority's approach is of a particular nature, my approach has been different. Accordingly, I am submitting this Memorandum embodying therein my views regarding the general approach to the matters concerned, stating the reasons for which I have come to the same conclusions as the majority have come to in respect of particular issues, making my own recommendations in respect of matters for which the majority have thought fit not to make any recommendation and commenting upon issues in respect of which I have dissented. In view of the position stated above, I have appended my signature to the Report subject to this separate Memorandum.

Terms of Reference and the task before the Committee.

2. At the very first meeting of the Committee which was held on the 18th of June 1958, I raised the question and sought a clarification as to whether the Committee would be competent to make recommendations for amendment to the existing acts by necessary legislation. The other members of the Committee then opined that the Committee would have to work within the terms of reference and it was beyond the scope of the Committee to recommend any legislative amendments to the existing statutes. The Chairman then agreed with the view of the other members that the Committee would have to work within the four corners of the present structure and statutes, though it was free to discuss any matters arising out of the terms of reference and if any provisions in the existing tax laws stood in the way of its making recommendations, it would informally consult the Government before doing so. As I held the view that justice could not be done to the task assigned to the Committee without going into the question of fundamentals and without suggesting changes in respect of the various tax laws relating to direct taxation, the Chairman on behalf of the Committee made a reference to the Honourable the Finance Minister, and making a reference to the terms of reference he stated that the first question that came up for consideration in the

preliminary discussions of the Committee was whether it would be competent for the Committee to suggest changes in the substantive provisions of direct taxation statutes. He stated that it appeared to the Committee that the terms of reference did allow such recommendations to be made because without such changes the administrative organisation and procedure necessary for implementing the integrated scheme of direct taxation could not be achieved. He further stated that the Committee would like to be assured that this interpretation was correct. He also referred to the question of certain other changes which had been suggested and which changes affected the charging provisions of the existing statutes. Such changes, he added, may not have a direct bearing on the administrative organization or procedure but were, in the opinion of the Committee, essential if tax evasion was to be eliminated or inconvenience to assesses was to be avoided; further, that the Committee felt that even if the terms of reference did not cover strictly such recommendations, the usefulness of their report would be considerably reduced if they were precluded from making recommendations of this nature. The Chairman desired to know whether in the opinion of Government the terms of reference were wide enough to cover such recommendations. If Government felt that they were not, it might kindly be intimated, he added, whether the Government would be willing to enlarge the scope of the terms of reference to permit such recommendations to be made.

3. The Honourable the Finance Minister by his letter dated the 18th of October, 1958, expressed the view that the terms of reference did permit the Committee to suggest changes in the substantive provisions of direct taxation statutes so far as they related to the administration, organization and machinery necessary for implementing the scheme of direct taxes. As regards the other provisions he suggested that the Committee should confine itself to such matters as would have a bearing on the problem of tax evasion and of harassment. A wider scope, he added, would make the task of the Committee too unwieldy because the Committee had a difficult task before it.

4. The Committee examined all these issues critically but the majority restricted its attention mostly on items relating to tax evasion. As regards the other issues which had a bearing on the harassment to the taxpayer and the inconvenience to be caused, for most of the items they took the view that this could be achieved by administrative instructions and executive action instead of having amendments to the statutes. Further, in respect of certain fundamentals, they have come to the conclusion that the same were outside the ambit of the terms of reference. In spite of the nature of the query submitted by the Committee to the Honourable the Finance Minister and the clarification given by the Finance Minister, the majority have taken the view that although the terms of reference to the Committee restrict the Committee to considering only the administrative and procedural aspects of direct taxation laws. They have at times gone into the rationale of certain provisions which cannot altogether be divorced from their administration. This, in their view, was inevitable in certain cases. They have further observed that they have endeavoured to confine themselves to the administrative and procedural aspects of these laws as far as possible.

The above approach is not in conformity with the approach made by the Committee themselves while seeking clarification from the Honourable the Finance Minister and in view of the clarification had, a reference to the restriction of considering only the administrative and procedural

aspects is not reconcilable with the approach actually made. I also cannot subscribe to the view that the recommendations are of such a nature that the majority have endeavoured to confine themselves to the administration and procedure of the laws as far as possible irrespective of the question as to what exactly is meant by the administration and procedures of the laws.

A reference to the recommendations would at once show that scores of issues have been discussed, commented upon and ultimately final recommendations made in respect of such issues which cover a comprehensive amendment of the various direct taxation laws. It shall be my endeavour to comment separately on each of the relevant and important issues.

5. My approach to this basic issue is that this Committee being concerned with the full detail of the actual administration of the various direct tax laws is in a much better position to judge the relevant provisions. Such a judgment would be made on a practical basis and would not be a consideration of an academic nature. It is only in the actual administration of the various laws that the efficacy or otherwise of those laws can be gauged and from that point of view any recommendation made which would avoid unnecessary harassment and/or inconvenience to the taxpayers and also ensure tax evasion to be checked would be a recommendation falling fully within the purview of the terms of reference of the Committee. It is in this light that I have approached the matter and therefore differed from the majority over the fundamental issue.

General comments.

6. The majority have recommended a scheme for expeditious assessment of persons in the smaller income group which according to them would be made without resort to detailed scrutiny and the scheme would at the same time provide sufficient safeguards against possible abuse of the scheme. This suggestion to my mind is one which has an exterior attraction only. In actual practice there would be great handicaps in the administration and, on the contrary, it would involve greater inconvenience and harassment to the "small income" class of taxpayers. In this connection in my detailed observations which follow I have suggested that the problem can be solved by raising the minimum taxable limit rather than having a so-called attractive system placed before the Government and the public as a sort of a novel and a helpful recommendation. I should like to invite attention to my specific and detailed observations in this behalf made hereafter.

7. The majority have also referred to the recommendations relating to tax evasion and tax avoidance and have highlighted the fact that they have devoted one chapter exclusively to the discussion of special measures for checking tax evasion and avoidance. They have advocated the granting of more powers, the stiffening of the penal provisions and the institution of intelligence wings, police squads and other measures. They have not given the required consideration to the question whether the existing powers are adequate or not and whether a proper use thereof has been made. They have also not considered the question from the angle as to whether it is want of proper talent in the department or want of efficiency or other reasons which may have been responsible for a measure of evasion prevailing in the country. Instead of thinking in terms of making a fuller approach and a forthright one to suggest legislative changes, to prevent difficult situations arising, the majority have

thought in terms of plugging the loopholes. They have not thought fit to accept some of the suggestions made by me with a view to simplify the tax provisions and their administration and while discussing the question of public relations, they have not accepted my suggestion that it is the practice of the intention to foster public relations that is wanted instead of a mere precept being given. My suggestion was to see that the taxing statutes, their relevant provisions, and the administration should speak loudly for the fostering of public relations. In other words, the statutes and the administration thereof should be so shaped and regulated that the honest taxpayer gets a full assurance that he would get a square deal.

Integrated Tax Code.

8. The Committee were not in favour of recommending an integrated tax code but the recommendation in the report shows a halting approach by a mention being made to the effect that till such time as the Department and the taxpaying public gained sufficient experience of the working of the existing statutes, the present position may be allowed to continue. This recommendation, without a definite statement as to what the final goal should be, does not give a positive recommendation. Accordingly, I am stating my different view in this behalf. The basic considerations for the types of direct taxes are quite different and it is only the procedural sections in respect of which one could think in terms of a collation. Obviously, therefore, an integrated tax code would ultimately mean several chapters affecting the different types of direct taxes in one piece of legislation, there being a common procedural chapter relating to all the statutes. *If an attempt were made to collate the basic provisions relating to different direct tax acts, it would result in a degree of confusion and the drafting would leave several lacunae.* The idea of an integrated tax code appears to have been borrowed from Mr. Nicholas Kaldor, a Reader in Economics at the University of Cambridge. He suggested a single comprehensive return, a self-checking system of taxation and an automatic reporting system and the various new taxes which have been introduced since 1957 are the result of the recommendations made by him.

9. The terms of reference indicate the fact that the integration of the direct taxation has been completed but the Committee put a specific question, i.e., Question No. 103 as under:—

“Do you consider the present structure of direct taxation to be completely integrated? If not, what changes do you suggest to make it more effective in checking tax evasion and, at the same time, minimising the hardship that may be caused to tax payers?”

Mere imposition of additional taxes cannot and does not bring in integration and it is a question whether the imposition of other direct taxes by itself would enable Government to tackle the question of evasion. Persons who want to evade taxes would evade all the taxes together and a mere imposition of a Wealth-tax or an Expenditure-tax or a Capital gains tax would not give that measure of protection to the State which is essential. [* * *] *Thus, while additional direct tax laws may provide extra revenue for the State, it would not be correct to say that they are a part of the integral whole to combat evasion.* *

* * Vide Para 2 of letter dated 30th Nov. 1959 from the Chairman of the Committee printed at the beginning of this report.

It was but essential that the Committee should have given due consideration to this matter and given their positive finding. In the finalised chapter the majority have now observed that they do not consider that the Committee was called upon to express an opinion on the particular aspect of the matter as to whether the tax structure was a completely integrated one or whether it was not. In my view it is very essential to make a definite comment on this very important matter and I am stating my positive views in the matter in the succeeding paragraphs.

10. The various statutes owe their existence to the desire of the State to have more revenue and to implement the suggestions of Mr. Kaldor who made his various recommendations in "Indian Tax Reform—Report of a Survey", issued by the Department of Economic Affairs, Ministry of Finance, Government of India. *It is pertinent to observe in this connection that some of these borrowed ideas lacked a basic foundation.* At the time the relevant bills were introduced, it was mentioned that Wealth-tax was being levied on domestic companies in West Germany, Norway, Switzerland, Finland and Italy. It was further stated that there was a tax on wealth of individual companies in all the States in the United States of America, the rates some times going as much as 2 per cent. The respective rates as mentioned were, Germany $\frac{3}{4}$ per cent, Norway 0.6 per cent, Switzerland $\frac{3}{4}$ per cent, Finland $\frac{1}{2}$ per cent Italy $\frac{3}{4}$ per cent.

A perusal of the respective rate structures of the countries reveals a different position.

Switzerland—Flat property tax of 0.075 per cent on the amount of capital and reserves as a Fedral levy plus additional cantonement tax on capital and reserves varying from 0.05 per cent to 0.2 per cent.

Finland—There is no tax on investment capital but there is a real estate tax varying from 0.1 per cent to 1 per cent.

Norway—State Capital Tax on the net wealth, the rate varying from 0.2 per cent for domestic companies to 0.75 per cent for companies domiciled abroad.

Sweden—Tax payable on the net amount of capital owned except furniture and articles of domestic equipment used in the home, the rates graduating from 0.5 per cent to 1.8 per cent, the highest rate obtaining for a net worth of about Rs. 9,50,000, there being a stipulation to the effect that in case the total assessed income from all sources is less than $3\frac{1}{2}$ per cent of the capital assets then the capital assets tax is not levied on the part of the assets which is over 30 times the total assessed income from all sources.

It would appear from the above analysis that the basic data relied upon for the new levies was defective. Moreover, the property taxes were confused with taxes on wealth of companies or individuals. It is also pertinent to mention that wealth-tax in respect of individuals obtains only in Holland and Sweden.

11. *Great reliance is placed on the information given to us by "experts" but a fuller checkup enables one to get the correct picture.* Mr. Kaldor when he appeared before the Committee made a mention of the fact that the Gift Tax rates in India were low. When a question was put to him about the effective rates of Australia, Canada and the U.S.A., he asked

whether the factor of the integration for tax purposes of the gifts made in successive years was taken into account. Even taking into consideration this factor, a comparison would show that our rates are quite high as compared to the effective rates of all these countries. In another context, while discussing the question of penalties and fines, Mr. Kaldor observed that the American law allowed a fine 10 to 12 times the amount of tax, not just one or two times. When he was questioned as to whether he would like to check up the provisions of the Internal Revenue Code of America, he said he had not checked up the position recently and that his knowledge came from many years ago when he discussed those matters in the Tax Commission when the figure of 10 to 12 times was mentioned but he could not say whether the figure of 10 to 12 times came under the head of monetary penalty or some other penalty. It is pertinent to note that the Royal Commission's final report was presented to the Parliament in June, 1955, the report having been submitted on the 20th of May, 1955. When the provisions of the Internal Revenue Code, from Chapter 68—Section 6671 and 6675 as also the provisions of Chapter 75, Section 7201 onwards were quoted, Mr. Kaldor stated that the law may have been changed. The correct position is that at no period of time the penal amounts of 10 to 12 times have obtained in the United States of America.

12. *It would be apparent from the above analysis that the attention that should be bestowed on these matters is not being bestowed. In making an approach to such matters of vital importance, a full check-up as to the basic data is absolutely essential.*

13. The majority have also considered the question of the frequency in amendments of the various statutes and have opined that the changes made grew from the desire to render maximum possible justice or rectify the lacunae that have come to light. *My analysis, however, shows that these changes have been made with different objectives, viz., to raise more revenues, to reduce inequalities and to plug in the loopholes.* They have further opined that the present integrated tax structure should be left undisturbed for some period of time and given a fair trial. I wish they had also considered the question from the angle whether the different statutes ensure the maximum possible justice and whether there are any measures which require a modification or elimination.

14. Another suggestion which the Committee have made is that the changes in the direct tax laws should be effected by presenting the amendment bills which gained consideration by the joint select committees of both the Houses of Parliament and therefore provide opportunities for the taxpayers to make their representation and also enable a full and a detailed discussion in both the Houses of Parliament. In this connection I should like to point out that this suggestion has been made taking into consideration the fact that the tendency to make changes of a vital character in the direct tax statutes through Finance Bills is not healthy. Such a procedure results in practically no time or very little time being given to the taxpayers even to cursorily study the implications of the changes, let alone the question of making their detailed observations. Organized chambers of commerce in the country have endeavoured in spite of these great handicaps to submit their considered suggestions but these suggestions have not received that attention which the respective matters should for want of time and because of this peculiar procedure being adopted. It is in the fitness of things, therefore, that vital changes should be made only through amending bills for the various direct tax acts and not through finance bills.

15. *An additional suggestion which I should like to make in this connection is that the papers relating to such vital matters should be circulated to the chambers of commerce in good time and copies should be freely available immediately after these bills are introduced because, at present, considerable time elapses between the date of the introduction of the bills, their publication in the gazette and their availability to the members of the public. It is but appropriate that the public should have the fullest opportunity of giving their comments and the time allowed should be sufficient for a proper consideration to be made.*

16. The majority have made one more suggestion with regard to the rates of tax and have opined that frequent changes should not be made in the rate structure which must be incorporated in the statutes. They have further stated that while the basic rates should be kept unchanged, the budgetary needs of the State may be secured through levying surcharges. This suggestion assumes the fact that there is no scope for any consideration for the reduction of the rates and even marginal adjustments by way of reduction would thus stand ruled out on the implementation of the recommendation of the majority. On a proper examination I am not inclined to accept this majority view. *The rates should stand regulated by the Finance Act so that the possibility of a reduction in the rates is not ruled out particularly for income taxation, i.e., for income-tax and super-tax.*

Expenditure Tax Act.

17. One of the acts, viz., the Expenditure Tax Act, has been imposed in this country without any parallel in the whole world. The estimated yield was expected at Rs. 10 to 15 crores by Mr. Kaldor. The estimate made in respect hereof for the 1958-59 budget was Rs. 3 crores which was revised to only Rs. 1 crore at the time of the presentation of the 1959-60 budget and according to the figure now made available, the amount is only Rs. 65 lakhs. A major portion of this amount, approximating to about Rs. 56 lakhs (as per the rough figure indicated during discussions) would come from the then Native State Princes so that the collection from the other citizens would be just about Rs. 9 lakhs. There is thus no revenue aspect in this levy and the question of the measure being in any way helpful in checking evasion is answered by the fact that even otherwise in such types of cases the Department is bound to and does make detailed inquiries as to the amount of personal expenditure and additions are made in appropriate cases for the amounts which may have been spent but not reflected in the books of account or not drawn from disclosed sources. *It is thus a measure which has no advantage, is a contradiction to the principles of income taxation and is a measure which creates a lot of unnecessary amount of work load for the department and fruitless spending of energy on behalf of the respective taxpayers.* Mr. Kaldor's own conclusion is that a personal expenditure tax would undoubtedly be a more complicated tax to administer than the present type of income-tax; it would make greater demands on the taxpayer in the preparation of the return as well as on the revenue officials in checking it, that it may never assume the role of present income-tax as a tax embracing 2/3 if not 3/4 of the whole working population of the country but subject to these limitations he found nothing in the basic conception which would present inseparable problems from the administrative point of view or which would necessitate a departure from the high standard of tax administration customary in Britain. He further opined that it

would be impossible to think of replacing the present system with an expenditure tax system at one stroke—that there was well over a hundred years experience in administering the income-tax law while there was no such experience concerning the expenditure tax and until some practical experience was gained in its administration it was not really possible to foretell with any confidence how difficult its administration would prove in practice. And he made a further suggestion that assuming that the superiority of the expenditure tax over the income-tax from the point of view of equity, incentives and economic sufficiency is as great as was claimed by him, the only practical line of advance was to make a cautious beginning by introducing an expenditure tax side by side with the existing income-tax so framed as to apply to a limited number of taxpayers only in the top brackets. In spite of these qualified observations and the cautious approach suggested, this novel measure found place in the Indian statute book. *Experience has shown that it does not gain a substantial amount of revenue, it causes great inconvenience to the respective taxpayers and that it is a measure which causes administrative difficulties to an extent.*

18. There are some other aspects of this tax on which I should like to focus attention. It is a question whether one can measure with a degree of accuracy the saving which an assessee may have and unless the fullest delving into the personal affairs of the taxpayers were to be made, and information to a degree collected, it would not be possible to gauge matters correctly. Such a tax introduces a most undesirable factor that to avoid the tax the respective taxpayers would be more inclined to resort to cash transactions and cash hoarding would get aggravated with all its implications and impact on the economy of the country as also on the general morale of the taxpayer. And further resort to cash transactions would be an added load to tax evasion. It would be difficult to make a distinction between durable consumer goods and those which are not and therefore the amount of taxable expenditure and the saving would be matters which would get further confused as a result of want of such an interpretation.

19. Mr. Kaldor, while he gave evidence before the Committee stated that the main defect in the Expenditure Tax Act of India was the link with the income limit which was wrong in principle and made the tax impossible to administer in practice. He was further of the view that there was an excessive list of exemptions. He saw no justification in equity why a tax levied on expenditure should be given a wider range of exemptions. At the same time he opined that one could not introduce measures which the "customers" of government, i.e., the taxpayers, would resist too strongly, and therefore they must get their co-operation. He himself had, therefore, recommended a number of exemptions even though he felt strongly about the exemptions of the kind where items of personal consumption expenditure were exempted. He further opined that purchase of gold and jewellery was an investment and therefore its exemption was not wrong. The value in such cases was not destroyed by consumption. He further observed that restrictions of exemptions must be done away with in a gradual manner and things should be tightened later. When he was asked a question as to whether such taxpayers would be spending monies out of savings or out of capital, Mr. Kaldor gave only a general reply that people in upper ranges of income spent much more and in reply to a question whether such amounts would not be spent out of monies outside the books, Mr. Kaldor stated that it was a question of one's judgment and during further discussions he referred to the fact that the Congress Party and Government were very much alive to the

problem of economic inequality in a poor country and there was a serious move ahead, although nobody quite knew as to how to give proper effect to the proposals of putting a ceiling, or say, nobody should have more than Rs. 30,000 or whatever it was. Incidentally, he said this was the basic exemption limit for expenditure-tax. In this context he further observed that he did not believe that such a proposal could be effectively adopted in a country like India and it could not be adopted. *For example, it would be meaningless if they would resort to some arbitrary division of income and if ever a serious effect was made to adopt it by making a ceiling not only on income but on making some attempt to limit everybody's expenses to some extent which should be an essential condition for taxation.* It was therefore that he suggested the imposition of an expenditure tax because, by so doing, they could attain the main social objective which had an egalitarian purpose and this was the "new" explanation that Mr. Kaldor gave to the Committee. And in further clarification of the question about monies being spent out of unaccounted resources and the matter was one which was related to the tackling of the question of evasion and the roping in of unaccounted monies for taxation, Mr. Kaldor pertinently observed that if this was really done, the objections which were now raised that these taxes destroyed incentives and destroyed the funds out of which capital formation arose could have some substance and so far as the Expenditure-tax was concerned, the State could restrict the spending of wealth without impairing the desirability to save and accumulate wealth or without reducing the socially desirable incentives of saving money and thus he reasoned out the progressive tax beyond a point on an expenditure basis rather than on income basis.

20. Incidentally I should like to make a mention of the fact that the majority, while recommending the so-called attractive small income group assessment scheme have recommended that wealth statements should be called for in all cases which are not liable to wealth-tax once in every four years and for that purpose they have suggested a form which would have to be filed by every income-tax payer, whether his taxable income including the taxpayers falling within the purview of this new scheme. This wealth-tax statement includes also information relating to the expenditure of the assessee and the expenditure tax shadow has thus been extended even to the smallest taxpayer. I shall discuss in greater detail the implications of this new scheme and it shall be my endeavour to point out that there is no need at all to have a scheme because the majority could not think in terms of making it obligatory by statute and having made it voluntary, **the question of opting out of the scheme** arises because, for all assessees the statutory provisions would be identical and even without a scheme if the Department so thought fit, it could accept the returns for a number of years in appropriate cases. It is therefore a misnomer to call the procedure suggested as a new scheme even. I shall also endeavour to point out in greater detail under the appropriate head the drawbacks and shortcomings of the so-called scheme which would create greater harassment and more inconvenience to this small class of taxpayers.

21. *The above analysis would show that there is no justification for the retention of this tax measure on the statute book. I would therefore strongly urge the abolition of the Expenditure Tax Act, which has no utility value and which is unnecessarily frittering away the time of the assessing officers without commensurate advantage.*

Raising of Minimum Taxable Limit.

22. In connection with the so-called new scheme for small-income group, I should like to make a positive suggestion that the minimum taxable limit should be raised. The majority have come to the conclusion that such a suggestion would be outside the terms of reference of the Committee or the scope of its work but I respectfully disagree with this view. At present the time and trouble involved in handling the small cases is out of all proportion to the revenue raised and that is the very reason why the majority have thought in terms of suggesting the so-called small income group assessment scheme. They have therefore conceded the position that administratively the lowering of the limit or the income categories in the lowest base cause so much amount of work for the department and from the point of view of administrative efficiency and utilisation of the departmental personnel for giving more attention to income groups of the higher categories, a recommendation to raise the minimum taxable limit would be one which would definitely come within the scope of the terms of reference of the task before the Committee.

23. The limit was lowered at the time the 1957-58 budget proposals were considered and implemented. Following is the extract from the speech of the then Finance Minister:—

"I propose also to widen the present income-tax base by reducing the taxable minimum from Rs. 4,200 to Rs. 3,000. The minimum limit had been raised over the past few years mainly for administrative reasons. An income of Rs. 4,200, modest though it is in absolute terms, is quite a large multiple of the average level of income in the country. It is reasonable to expect that those with an income of over Rs. 3,000 should also make their contribution, however, small to the Public Exchequer, and should come within the range of direct taxation. As development proceeds, there will, I expect, be a large and progressive increase in the number of incomes within this range and I think it is essential, if the Exchequer is to benefit proportionately from the expansion of incomes consequent on development, that these incomes are brought within the income-tax range. I therefore, propose to place the exemption limit now at Rs. 3,000 for individuals and Rs. 6,000 for Hindu Undivided Families. I propose, however, to couple this with an increased allowance for married people. The extra tax-free slab of Rs. 1,000 which at present applies to married people will now be raised to Rs. 2,000. The wider coverage of income-tax consequent on this set of proposals will bring in about Rs. 5 crores this year."

It would appear that the Honourable Minister expected a revenue of Rs. 5 crores as a result of the lowering of this limit but the actual result was a recovery of less than one crore of rupees.

24. I should also like to focus attention on the observations made by Shri M. Ananthasayanam Aiyangar when the Finance Bill for 1950 was being discussed in Parliament. In discussing the question of raising of the minimum taxable limit he said:

"Likewise we have increased the exemption limit of the undivided Hindu Family to Rs. 7,200, on the basis that an undivided Hindu family consists of at least two individuals. There are of course many persons who feel that with respect to individuals the exemption limit could have been raised to Rs. 4,000

or 5,000. Even by our having fixed it at Rs. 3,600, nearly a lakh of persons have benefited by the concessions. On this item alone the Exchequer will lose nearly Rs. 50 lakhs. Though it may be argued that we have a surplus budget, we have to be prepared for any eventuality on account of the unfortunate happenings in the East. Therefore, we have to be careful and ought not to fritter away what little surplus we have been able to accumulate or what little surplus is expected during the course of the year. But a relief to the middle classes was absolutely necessary. During the war the richer section of the population flourished. The poorer section of the population like factory and railway labour also stood to gain, because their wages went up three or four times. While in the case of labour all the members of the family work, in the middle class families there is only one earning member. The middle class is the backbone of the country; it is the most vociferous section that constitutes public opinion; the major part of the services both in the Centre as well as in the provinces is drawn from that section of the community. For all these reasons their faithfulness and contentment is of the utmost importance for the welfare of the country. I am therefore thankful to the Hon. the Finance Minister for having consented to this relief to the middle classes."

25. There is yet another aspect of the matter which requires to be considered. The amount of tax payable individually by the lowest category taxpayer is negligible and the taxpayer is mostly ignorant. Numerous complaints about the harassment at the hands of Inspectors have been voiced and representatives from chambers of commerce at smaller places have brought this aspect to the notice of bigger and organised chambers of commerce and I have had a personal indication of these difficulties as a result of my association with the organized chambers of commerce and industry. *The lowering of the taxable limit may have tinge of appeal about the smallest taxpayer participating in the Plan effort but the fact remains that most of the assesseees in this class are illiterate and with the small income and resources at their beck and call, they are in a position of disadvantage and it is but fair that the State gives them full protection and does not expose them to unnecessary and undue harassment at the hands of the inspectorate class as also others. The advantage that would flow from the elimination of the lowest base of the taxpayer would be so great that it would compensate the State a number of times the revenue sacrificed. It would also provide the necessary protection for the lowest category taxpayer. I would therefore strongly urge that, with a view to strengthen the administrative set up of the Department and with a view to introduce the element of efficiency which is so essential, this step of raising the taxable limit should be taken and the limit should be raised to Rs. 5,000 for Individuals and Rs. 10,000 for H.U.F. or at least Rs. 4,200 for Individuals and Rs. 8,400 for H.U.F.*

Simplification of the Statutes.

26. The majority have disposed of this very important matter in a short paragraph. They have opined that if the changes in the statute are reduced to the barest minimum and the provisions are arranged more logically and expressed in a clear language, much of the existing ambiguity would disappear. They further observe that the Law Commission

have prepared a redraft of the Income Tax Act largely fulfilling these requirements.

27. I wish that the majority had given due weight to the observations contained in paragraph 1080 of the U. K. Royal Commission's Report which was fully discussed by the Committee.

I reproduce the relevant portion below for a ready reference.

"The Law of income-tax is not singular in that respect. Though it may represent a rather extreme instance of a modern malady. In any case, if the layman is to know where he stands he will have to take a satisfactory explanatory material from the department, not on his personal study of legal provisions. What we have in mind goes wider than this; it is that the sections themselves as well as the forms in which they are expressed are difficult and complicated; and the difficulty of grasping them is added to by the very great volume of the government material. In those circumstances it seems an obvious duty to urge that an effort should be made to produce some greater simplicity, atleast of structure and expression."

I should also like to place the correct position so far as the Report of the Law Commission is concerned. No doubt, the Law Commission have made an effort to express the various provisions in greater detail but in doing so the compass of the legislative provisions has expanded. Moreover, the Law Commission have not considered the question of simplicity from a fundamental aspect and their work was restricted to the re-writing and redrafting of the various provisions and indicating certain changes in respect of particular provisions. A reference to the introduction to the report of the Law Commission of India (Twelfth Report) on Income-tax Act, 1922 indicates the position in this behalf under paragraphs 5 to 11. This portion is reproduced below for a ready reference:—

5. As the first step in the simplification of the Act, we have made a fairly logical rearrangement and re-grouping of the sections of the Income-tax Act. Each chapter deals with a particular topic.
6. The next step was simplification of the language of the Act. This was done by splitting up the present sections, which run into several pages, into independent sections. Wherever possible, provisos were removed and were converted into independent provisions of the Act.
7. As our terms of reference implied the restriction that the tax structure should not be altered, no major change affecting the substance of the law has been made in the substantive provisions.
8. We, however, felt that a few minor changes in the substantive parts and a few major changes in the present procedural provisions would make for simplification. These changes have been made and will be indicated in the appropriate places.
9. We would like to say at the outset that there can be no real simplification of the Income-tax law without a simplification of the tax structure. As this was beyond the purview of our work, our task of simplification has been greatly hampered.

10. We have examined the Income-tax Acts of other countries to study the scheme of arrangement of the sections and the manner in which analogous provisions have been drafted in those Acts. We have derived considerable help from them. *We wish the Indian Legislature would simplify the tax structure of this country on the lines adopted by some other progressive countries.*
11. We may also add that in framing our proposals we have not been unmindful of the recent taxing statutes enacted in India, such as the Estate Duty Act, the wealth Tax Act, the Expenditure Tax Act and the Gift Tax Act. We have examined these statutes, and where we thought desirable, drawn upon the provisions of these statutes in framing our proposals."

It will appear from the above extracts that according to the Law Commission no real simplification of the Income-tax Law is possible without a simplification of the tax structure and this task was beyond the purview of their work and they further state that their task of simplification was therefore greatly hampered.

The present structure of the Income tax Law has been the result of a haphazard growth and the confusion created can best be described by the following observations made by the Law Commission in their study report in the 2nd paragraph of the introduction:—

"The hopeless confusion into which the Income-tax law has fallen is mainly due to precipitate and continuous tinkering with the Act by the legislature. The amendments to the Income-tax Act have been so short-sighted and so short-lived as to rob the law of that modicum of stability which is essential to its healthy growth. Before the provisions of the Act can be sufficiently clarified by the judicial process, new provisions are substituted in their place. In legislation as in other fields of human activity, it is well to bear in mind the dictum of Bacon. 'Tarry a little, so that we may make an end the sooner'. Stability is most essential to the proper administration of a taxing statute, and if the tax structure of this country is to be put on a sound footing, it is essential that a halt should be called to the making of ill-digested amendments in a frenzy of hurry which has characterised the history of income-tax law of the last few years."

The Law Commission further observe that the Government had asked them to revise the Income-tax Act so as to make its provisions more intelligible without affecting its basic tax structure but the question of simplification so far as the tax structure is concerned and as it relates to the checking of tax evasion and the question of avoiding harassment and inconvenience to the tax payer is within the purview of the work of this Committee.

I am of the view that, the material which the Committee gathered and the advantage it has in having the background of the recommendations of the Income-tax Investigation Commission, the Taxation Enquiry Commission, the U.K. Royal Commission and the Law Commission' it should be in a position to make positive recommendations which can ensure simplicity to the maximum degree possible. To do this, it is essential that the factors which are an impediment towards a simple presentation of the statutes and their interpretation are looked into

critically. I indicate some of these fundamental issues in the comments which follow:—

Definition of 'Income'.

28. The majority have disposed of this important question in a short paragraph and the observation which they have made is that they are in complete agreement with the views expressed by the Taxation Enquiry Commission that perhaps more harm than good might result from the taxation act with a rigid definition of income. The additional observation made by them is that apart from the difficulties involved in attempting an exhaustive definition of income, such a definition would be subject to frequent legislative changes consequent on the emergence of new situations not envisaged in that definition. *I am not satisfied with this casual approach to this important matter. The purpose of defining income with some preciseness is not to make the definition of income a rigid one but the intention is to make it an inclusive definition. By doing so, the position would stand clarified to a degree and it would be possible even for a layman to find out whether a particular item of income is or is not taxable. The definition should state that it would include particular items with a stipulation that the enumeration of such items need not necessarily restrict the general concept of income. The Act should also state the items which are not income for the purposes of assessment. By doing this, two purposes would be achieved—(1) that there would be no loopholes left and therefore the question of the taxpayer taking undue advantage and litigating over particular issues would be minimised, and (2) the taxpayer would be able to understand his position very precisely without having any need to go in for expert guidance. In fact, even the Law Commission have made a limited attempt in respect of this matter.*

It has been assumed that most of the countries in the world have not attempted a definition of income. The majority have referred to the observations made by the U.K. Royal Commission at page 7 of their report under paragraph 27 but they have significantly refrained from stating the observations contained in the paragraph immediately following, viz., paragraph 28. The observations made in that paragraph are reproduced below for a ready reference:—

"28. The tax code contains no general definition of income. It is often said that it is impracticable or undesirable that it should. We do not feel it necessary to subscribe to either of those epithets. *The codes of other countries have achieved the work of definition without any known ill-effects.* What seems to us more important is that no real advantage could possibly result from the introduction of a general definition that had to cover so multifarious a subject as taxable income. If it were expressed in very general terms the work of deciding how to apply it to particular instances would have to be done by deductions drawn from other parts of the code's framework or with the help of general principles imported from without. To a large extent the United Kingdom system itself has proceeded by this method of interpretation. On the other hand, the more particular the definition, the more it tends to become a mere list of different classes of receipt, and the anxiety not to exclude some class by inadvertence or omission leads to the addition of a comprehensive "sweeping up" clause at the end which, in effect, raises over again the

problem of interpreting the general phrase in the light of a particular instance. The United Kingdom code has in fact established the limits of what it will regard as taxable income by formulating a list of different classes of income, grouped under five Schedules; and the interpretation of the wording and significance of these lists has been the subject of copious decisions of the Courts of law during the course of some three generations. Their interpretation has been governed by the principles, in itself unexceptionable, that income tax is a tax on income. We have not looked to refine upon this principle by producing a more precise definition. What we have looked for in the course of our review is to see whether the rules that determine the existing classifications and their application to all the varied forms of possible receipt fall short of or exceed a true conception of income for the purposes of a widely distributed annual tax."

It would appear from the above quotation that the U.K. Royal Commission did not necessarily subscribe to either of the epithets, viz., that the tax code contains no general definition of income or that it is often said that it is impracticable or undesirable that it should. The Commission further observe, that the codes of other countries have achieved the work of definition without any known ill-effects.

29. It would be pertinent to state the dictionary meaning of income.

'INCOME'.

"that which comes in as the periodical produce of one's work, business, lands or investments (commonly expressed in terms of money); annual or periodical receipts accruing to a person or corporation; revenue".

(Shorter Oxford English Dictionary).

"that gain which proceeds from labour, business, property, or capital of any kind, as the produce of a farm, the rent of houses, the proceeds of professional business, the profits of commerce or of occupation, or the interest of money or stock in funds, etc.; revenue; receipts; salary; especially, the annual receipts of a private person, or a corporation, from property; as, a large *Income*."

(Webster's International Dictionary).

These meanings indicate the general features of common types of income and although they do not provide for the exclusion of the nature of unusual receipts, the items mentioned are quite important for an inclusive definition.

30. The view of the Privy Council as to the meaning of the word 'income' has been expressed as under:—

"Their Lordships are of opinion that there is no ground for cutting down the plain and ordinary meaning of the word 'income'. In their view the expression was intended to include, and does include, all gains and profits derived from personal exertions, whether such gains and profits are fixed

or fluctuating, certain or precarious, whatever may be the principle or basis of calculation".

The Privy Council while giving this description made no reference to returns from invested capital.

31. The evolution of the concept of Taxable Income under the Canadian Law can be gauged from the relevant provisions of the old Canadian Income War Tax Act.

"TAXABLE INCOME DEFINED—

For the purposes of this Act, "income" means the annual net profit or gain or gratuity, whether ascertained and capable of computation as being Wages, Salary, or other fixed amount, or unascertained as being fees or emoluments, or as being profits from a trade or commercial or financial or other business or calling, directly or indirectly received by a person from any office or employment, or from any profession or calling, or from any trade, manufacture or business, as the case may be whether derived from sources within Canada or elsewhere; and shall include the interest, dividends or profits directly or indirectly received from money at interest upon any security or without security, or from stocks, or from any other investment, and, whether such gains or profits are divided or distributed or not, and also the annual profit or gain from any other source including:

- (a) the income from but not the value of property acquired by gift, bequest, devise or descent;
- (b) annuities received under a contract (other than payments described in paragraph (c) of this sub-section) except a portion of each amount received thereunder that bears the same relation to the whole amount as the amount that the annuitant could, under the contract, have chosen to receive in lieu of the annuity or, if no such choice is provided by the contract, the present value (computed in such manner as the Minister may by regulation prescribe) of the annuity at the time of commencement thereof, bears to the aggregate (computed in the case of an annuity for life on the assumption that the annuitant will live during the period of his normal expectation of life calculated in accordance with mortality tables approved by the Minister) of the annuity for which the contract provides: Provided that this provision shall not be construed to prejudice the operation of sub-section two of this Section; [1940, C. 34, S. 8; 1945, C. 23, S. 1.]
- (c) any payment out of any superannuation or pension fund or plan; [1941, C. 18, S. 5; 1942, C. 28, S. 3; 1946, C. 55, S. 2(1).]
- (d) the salaries, indemnities or other remuneration of:
 - (i) members of the Senate and House of Commons of Canada and Officers thereof.
 - (ii) members of the Provincial Legislative Council and Assemblies.
 - (iii) members of Municipal Councils, Commissions or Boards of Management.

- (iv) any Judge of any Dominion or Provincial Court whose salary was increased by chapter fifty-nine of the Statutes of one thousand nine hundred and nineteen or by chapter fifty-six of the Statute of one thousand nine hundred and twenty and who accepted such increase, and any Judge of any such Court appointed after the seventh day of July, one thousand nine hundred and nineteen; and
- (v) all persons whatsoever, whether the said salaries, indemnities or other remuneration are paid out of the revenue of His Majesty in respect of his Government of Canada, or of any province thereof, or by any person, except as herein otherwise provided:
- (e) personal and living expenses when such form part of the profit, gain or remuneration of the taxpayer or the payment of such constitutes part of the gain, benefit or advantage accruing to the taxpayer under any estate, trust, contract, arrangement or power of appointment, irrespective of when created; [1939, C. 46, S. 3.]
- (f) rents, royalties, annuities or other like periodical receipts which depend upon the production or use of any real or personal property, notwithstanding that the same are payable on account of the use or sale of any such property; [1934, C. 55, S. 1.]
- (g) all annuities and other annual payments received under the provisions of a will or trust irrespective of the day on which the will or trust became effective and notwithstanding that the payments are payable at intervals longer or shorter than a year except a payment or portion thereof which can be established by the recipient not to have been paid out of the income of the estate or trust; and [1938, C. 48, S. 3; 1943, C. 14, S. 1; 1945, C. 23, S. 1.]
- (h) any amount received pursuant to a decree, order or judgment made by a competent tribunal in any action or proceeding for divorce or judicial separation or pursuant to a separation agreement as alimony or other allowance for the maintenance of the recipient thereof and the children of the marriage if any, if such recipient is living apart from the spouse or former spouse required to make such payment. [1942, C. 28, S. 3.]

32. It will be noticed from the above that taxable income did not include capital gains or accretions. In its ordinary sense it included that which came in and was capable of being collected. The thing sought to be taxed was not income unless it could be turned into money but that equivalent to money because it can be converted into money or expanded in any way the taxpayer pleases may be treated as income. Thus the statutory definition of income set forth in the Sections reproduced above consisted of a general definition of income as being the annual net profit or gain or gratuity from certain sources and of an enumeration of specific receipts.

Under the Canadian Income-tax Act of 1948 as amended upto 1958, World Income has been indicated as income from all sources inside and outside Canada and without restricting the generality it includes income

from all businesses, property, offices and employments. Section 5 enumerates the items to be included in the income from office or employment and gives a comprehensive list of the inclusions and the exclusions. Under Section 6 amounts to be included in computing income have been enumerated without restricting the generality of Section 3. These include the following:—

- “(a) amounts received in the year as, on account or in lieu of payment of, or in satisfaction of;
 - (i) dividends,
 - (ii) director’s or other fees,
 - (iii) annuity payments,
 - (iv) superannuation or pension benefits,
 - (v) retiring allowances, or
 - (vi) death benefit;
- (b) amounts received in the year or receivable in the year (depending upon the method regularly followed by the taxpayer in computing his profit) as interest or on account or in lieu of payment of, or in satisfaction of interest;
- (c) the taxpayer’s income from a partnership or syndicate for the year whether or not he has withdrawn it during the year;
- (d) an amount received by the taxpayer in the year, pursuant to a decree, order or judgment of a competent tribunal or pursuant to a written agreement, as alimony or other allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the marriage, or both the recipient and children of the marriage, if the recipient was living apart from; and was separated pursuant to a divorce, judicial separation or written separation agreement from, the spouse or former spouse required to make the payment at the time the payment was received and throughout the remainder of the year;
- (da) an amount received by the taxpayer in the year, pursuant to an order of a competent tribunal, as an allowance payable on a periodic basis for the maintenance of the recipient thereof, children of the marriage, or both the recipient and children of the marriage, if the recipient was living part from the spouse required to make the payment at the time the payment was received and throughout the remainder of the year;
- (e) the amount deducted as a reserve for doubtful debts in computing the taxpayer’s income for the immediately preceding year;
- (ea) such part of an amount payable to the taxpayer under a policy of insurance in respect of damage to property that is depreciable property of the taxpayer within the meaning of section 20 as has been expended by the taxpayer
 - (i) within the year, and
 - (ii) within a reasonable time after the damage, on repairing the damage;
- (f) amounts received in the year on account of debts in respect of which a deduction for bad debts had been made in computing the taxpayer’s income for a previous year whether or not the taxpayer was carrying on the business in the taxation year;

- (g) amounts received by the taxpayer in the year as premiums paid by a corporation on the redemption before April, 30, 1953, of any of its shares;
- (h) amounts in respect of benefits from or under an estate, trust, contract, arrangement or power of appointment as provided by section 63 or 65;
- (i) amounts deemed to have been received in the year by the taxpayer under section 67 as a shareholder in a personal corporation;
- (j) amounts received by the taxpayer in the year that were dependent upon use of or production from property whether or not they were instalments of the sale price of the property but instalments of the sale price of agricultural land shall not be included by virtue of this paragraph;
- (k) amounts allocated to him in the year by a trustee under an employees profit sharing plan as provided by section 79; 1943, c.52, s.6; 1950, c.40, s.1.
- (l) amounts received by the taxpayer in the year under an employees profit sharing plan established for the benefit of employees of the taxpayer or of a corporation with whom the taxpayer does not deal at arm's length; and
- (m) amounts received by the taxpayer in the year from a trustee under a supplementary unemployment benefit plan as provided by section 79A."

Amounts not to be included in computing are listed under Section 10.

Deductions allowed in computing income have been enumerated under Section 11 and such items consist of nearly 50 headings the more important of which are stated below:—

- Capital cost of property allowable under regulations;
- Allowance in respect of oil or gas, well, mine or timber limit;
- Interest including compound interest;
- Expenses of issuing shares or of borrowing money;
- Reserve for doubtful and bad debts;
- Contributions to Pension Fund;
- Convention expenses;
- Scientific research expenses;
- Interest on Death duties;
- Mining or logging taxes;
- Contributions to Teachers' Fund;
- Amount of set-aside or reserve by way of write-down of the value of assets or appropriation to any contingency reserve for the purpose of meeting losses on loans, bad and doubtful debts, depreciation in the value of assets other than bank premises or other contingency in the case of banks;
- Salesmen's expenses;
- Expenses of transport employees;
- Travelling Expenses;
- Meals expenses for employees.

Section 12 enumerates deductions not allowed in computing income.

33. *In the United States of America also gross income, adjusted gross income and taxable income have been defined. The well-known case of EISNER v. MACOMBER clarified the position and Mr. Justice Pitney, while delivering the judgment of the Supreme Court of the United States in the case observed as under:—*

“The fundamental relation of ‘capital’ to ‘income’ has been much discussed by economists, the former being likened to the tree or the land, the latter to the fruit or the crop; the former depicted as a reservoir supplied from springs, the latter as the outlet stream, to be measured by its flow during a period of time. For the present purpose we require only a clear definition of the term ‘income’, as used in common speech, in order to determine its meaning in the (Sixteenth) Amendment.”

“Here we have the essential matter; not a gain accruing to capital, not a growth or increment of value in the investment; but a gain, a profit, something of exchangeable value proceeding from the property, served from the capital, however, invested or employed, and coming in, being ‘derived’, that is, received or drawn by the recipient (the taxpayer) for his separate use, benefit, and disposal; that is income derived from property. Nothing else answers the description.”

34. *The terms, Gross Income, Adjusted Gross Income and Taxable Income, have been clearly defined under Sections 61, 62 and 63 of the Internal Revenue Code, 1954 of the United States of America. The general definition of gross income was contained under Section 22(a) of the 1939 code but the 1954 code provides that gross income shall include all income from whatever source derived and thus it incorporates the language of the Sixteenth Amendment to the constitution and the body of judicial law wherein the meaning of the term ‘income’ as used in that amendment had been developed. The significance of the change made can be gauged from Section 61(a) of the 1954 code which reads as under:—*

“Except as otherwise provided in this sub-title, Gross income means all income from whatever source derived, including (but not limited to) the following items:

- (1) Compensation for services, including fees, commissions, and similar items;
- (2) Gross income derived from business;
- (3) Gains derived from dealings in property;
- (4) Interest;
- (5) Rents;
- (6) Royalties;
- (7) Dividends;
- (8) Alimony and separate maintenance payments;
- (9) Annuities;
- (10) Income from life insurance and endowment contracts;
- (11) Pensions;
- (12) Income from discharge of indebtedness;
- (13) Distributive share of partnership gross income;

- (14) Income in respect of a decedent; and
- (15) Income from an interest in an estate or trust."

It will appear that the list of as many as 15 specified items has been made and a number of judicial concepts which are of a fundamental nature have been embodied in the statute.

35. *Adjusted Gross Income has also been defined and the concept of adjusted gross income is of primary application in the case of an individual electing the optional standard deduction.*

36. *Taxable Income has been defined by Section 63 and the 1954 code has substituted the words 'taxable income' for the words 'net income' used in Section 21 of the 1939 code. Taxable income is defined under Section 63(a) 1 as under:—*

"SEC. 63(a): 1.—GENERAL RULE. In the case of any person other than an individual electing to use the standard deduction, the term "taxable income means gross income minus the deductions (other than the standard deduction) allowed under Chapter 1. This definition is made applicable to all of Subtitle A, which deals with income taxes and applies generally to any taxable entity, including a corporation or an estate or trust."

Thus taxable income is that final amount against which the tax rate is ordinarily applied in the case of any taxpayer, whether a corporation or an individual or an entity such as an estate or trust which is taxable under individual rates. Accordingly it is more meaningful than the 1939 net income code concept and its variations.

37. So far as our country is concerned, the following concept of inclusive income items emanates from the judgments of the Indian High Courts, of the Privy Council and of the Supreme Court of India:—

- (1) Allocation out of revenue before it becomes income is not income;
- (2) Income must come from outside. In other words, one cannot make a profit out of himself;
- (3) Accumulated profits, capitalised and distributed between shareholders of a company in the shape of bonus shares are an accretion to capital and not income;
- (4) The sale of an entire undertaking represents realisation of capital;
- (5) Recovery of a part of a debt written off previously is an income receipt;
- (6) Compensation paid for the termination of an agency is a capital receipt;
- (7) Compensation for loss of right to future remuneration is a capital receipt;
- (8) Damages awarded by a Court for breach of contract are income receipts;
- (9) Lump sum paid in settlement of interest on capital of a business is a capital receipt and not income;

- (10) Lump sum payment for not resigning directorship is income receipt;
- (11) Lump sum received in consideration to commute rights to salary and pension is capital receipt;
- (12) Purchase money paid for the share of the deceased partner in a firm, i.e., really speaking the sale consideration received by the estate of a deceased partner is not an income receipt but a capital receipt; and
- (13) Unclaimed balance distributed to partners is capital distribution and not income distribution.

38. *In view of the above analysis I would strongly recommend to Government that with a view to avoid any loopholes being left, to simplify matters for the taxpayer and with a view to make the law intelligible even to the layman, income should be defined after examining the inclusive definition of the various items enumerated in respect of the legislations of the other countries as also the concept emanating from the judgements of courts of law in India. By so doing, a very useful purpose would stand achieved and the structure and the administration would stand simplified to an extent, thus smoothening the administrative and collection procedure.*

Definition of 'Expenses'

39. Here also the majority have discussed the matter in 3 small paragraphs and have opined that no useful purpose would be served by enumerating the items of allowables and deductions in greater detail and that it would only add to the volume of the Act. They further observe that whenever the allowability is settled finally, the taxpayers are well aware of that. This may be true of persons who have adequate resources at their command and who can afford to enlist the services of eminent lawyers and accountants but for the middle income groups and for the small income groups and for all laymen the position can stand simplified only by as exhaustive an enumeration of allowables as possible.

According to the present structure there is an enumeration of the business expenses which are to be allowed to some extent but in enumerating those items a rigidity obtains inasmuch as an item cannot be allowed under the residual clause, viz., Section 10(2) (xv) of the Act if it relates to one of the particular sub-clauses specified in the said Section. This basis creates numerous and unnecessary difficulties both for the department and the taxpayer. So far as the Department is concerned, it wants to put as restrictive an interpretation as possible while the taxpayer, on the other hand, seeks to put as wide an interpretation as possible. The result is litigation. Apart from this, the rigidity in allowing expenses automatically results in assessee making an attempt to inflate expenses. This is particularly so in cases where a particular portion, say one half or one-third of the expenditure in respect of particular activities is allowed. The assessee makes an attempt to debit more than the position warrants or the actuals justify. In the end, they get an allowance to the extent of what they would have spent and at the same time they would be able to withdraw monies in cash. This process results in a substantial amount going into the cash coffers with the result that all the consequential results from that follow.

40. *The statutes of the other countries enumerate the items of allowances exhaustively.* The Internal Revenue Code of 1954 of the United States of America makes a mention of deductions for individuals and corporations and these are enumerated under sub-chapter B, Part VI under Sections 161 to 177, both inclusive. While a very detailed consideration is given under these sub-heads and I do not desire to dilate upon such details, I should like to state the broad headings relating to these itemised deductions:—

- Sec. 161. Allowance of deductions.
- Sec. 162. Trade or business expenses.
- Sec. 163. Interest.
- Sec. 164. Taxes.
- Sec. 165. Losses.
- Sec. 166. Bad Debts.
- Sec. 167. Depreciation.
- Sec. 168. Amortization of emergency facilities.
- Sec. 169. Amortization of train-storage facilities.
- Sec. 170. Charitable, etc., contributions and gifts.
- Sec. 171. Amortizable bond premium.
- Sec. 172. Net operating loss deduction.
- Sec. 173. Circulation expenditures.
- Sec. 174. Research and experimental expenditures.
- Sec. 175. Soil and water conservation expenditures.
- Sec. 176. Payments with respect to employees of certain foreign corporations.
- Sec. 177. Trademark and trade name expenditures.

The following items also require to be stated in the itemization of deductions:—

- (1) Expenditure incurred for better facilities for existing business;
- (2) Lumpsum expenditure incurred not bringing into existence an advantage of an enduring character;
- (3) Expenditure incurred to protect an existing source of income or existing business;
- (4) Collective interest allowance subject to disallowance for amount relating to personal items;
- (5) Losses of trading stocks;
- (6) Replacements for business assets;
- (7) Losses on cessation of a business;
- (8) Travelling Expenses;
- (9) Successful defence in civil and criminal proceedings;
- (10) Subscriptions to trade associations;
- (11) Expenditure incurred for technical and other training for existing employees or persons sent for training with the ultimate object of being appointed in the existing business.

Having listed the items for such deductions, which need not be taken as having been exhaustively stated, I would urge that Government should examine the question of enumerating such deductible items with a view to clarify the position and avoid a situation which I have already referred to while considering the previous item, viz., definition of income.

One composite head of Income and one composite head of Deductions.

41. Our present Income-tax Act makes a rigid classification of income heads and also relates the allowance of expenses to such specific heads. The result is that an amount of expenditure incurred which may neither be of a personal nature nor of a capital nature would yet stand to be disallowed because of the rigidity of a linking of the expenditure with particular income heads. This rigidity brings into play the claim by taxpayers of expenses in such a way that there is a minimum loss to them and the inherent risk of cash being drawn out as mentioned by me while discussing the definition of Expenses arises in this connection also. *A simplification of the basis of taxation and its process would go a long way in clarifying the position and creating a situation whereby the State is able to charge precisely what is justly due to it and the citizens do not have any occasion to make any attempt to adjust matters in a different way.* In this connection I would certainly like to say that the practice of inflation of expenses is most objectionable one but the fact remains that the peculiar basis of the structure and process of transaction gives rise to it and every attempt should therefore be made to so simplify matters that a rigidity about the interpretation disappears and only just dues are claimed and allowed.

Conclusion

42. We have made a pertinent observation in the first Chapter of the report in the concluding portion that the administration of the taxes has to be so geared that the tax has to enlist the full co-operation of the assesseees and tap the sources adequately. A further statement is made to the effect that the recommendations which follow in the subsequent chapters are meant for achieving these ends. While I entirely endorse the view about gearing the taxes in a way to enlist the full co-operation of the assesseees, I am doubtful about the other objective being achieved, because I feel that a number of the recommendations made by the majority are of a nature which are not at all conducive to getting full co-operation from the taxpayers which the Committee have in mind. It will be my endeavour in my detailed comments relating to each chapter and each issue to examine this matter in such a perspective. I also invite particular attention to my observations which I have made in my comments relating to the chapter on Public Relations.

CHAPTER II

ASSESSMENTS I

Part A—Procedures of Assessments

Reduction in the period of Limitation

43. The Committee have taken the view that timely completion of assessments is of utmost importance. The Department's endeavour should be to complete all assessments in the assessment year itself and, save in exceptional cases, no assessment should remain pending for more than two years.

With this approach I expected my colleagues to accept my suggestion that the time for reopening assessments and for their completion should be reduced to three and six years from the period of four and eight years respectively at present obtaining under the legislation. *Administrative efficiency cannot be achieved without having statutory compulsion and when promptness is expected from the assessee, it is but to be expected that promptness from the Department also should be ensured and, in that light, I recommend that the period of four and eight years respectively now mentioned in Section 34 be reduced to three years and six years respectively.*

Filing of Returns

44. The majority have given a finding to the effect that delay in the filing of returns under the Income-tax Act is one of the most important causes of arrears of assessment as well as arrears of taxes. This finding is not correct for the reason that various cases are not taken up for consideration for a pretty long time and completed only when they are likely to be time-barred. Undue delay or deliberate delay in the filing of returns occurs in very few cases only and such cases can be dealt with on merit. The majority have further observed that the existing provisions in the Income-tax Act relating to the issue of statutory notices for the filing of returns and the absence of an automatic statutory time limit and the free use of discretionary powers in granting extensions of time are largely responsible for these delays. *This finding cannot be borne out by the actual position obtaining.. The Income-tax Officers are very reluctant to grant long extensions of time and it is only in fit and proper cases that they exercise their discretion and on a number of occasions the higher authorities have to be approached for extensions when such extensions are refused by the assessing officers. In cases where the assessee has a number of branches or up-country centres or has multifarious activities at several places, the finalisation and completion of accounts naturally entails more time and it is for this reason and only in such specific cases that longer extension of time are asked for and they are allowed after a full examination of the facts of the case and the justification for the granting of such extensions of time.*

45. *The majority has taken a very rigid view in this behalf and come to the conclusion that Section 22(1) should be abolished.* This section has a historical background behind it and when the section in question was inserted the conditions prevailing in the country were taken full cognizance of and the Honourable Finance Minister then gave a categorical assurance on the floor of the House that individual notices would be specifically issued under Section 22(2) in respect of existing assesseees. The Central Board of Revenue, while replying to this relevant question, observed as under:—

“Though the issue of a notice under Section 22(1) of the Income-tax Act is a mere legal formality, it serves a useful purpose. It brings in a forceful manner to the notice of the public that the new assessment year has begun and that the obligation to file a return has arisen. In view of the psychological value of the notice, the Board would like to continue it.”

46. The majority have further recommended that, instead, a simple advertisement should be inserted at the beginning of the year for each assessment year reminding the public about their liability to file their returns under the various Direct Tax Acts within the prescribed dates and that, failure to do so, would attract penal provisions of the respective Acts. According to their suggestion, such a notice should get the widest possible publicity through press, Radio, Cinema slides, etc., and suitable advertisement plates should also be displayed prominently in places of public resort. The majority, while making this recommendation, have taken into consideration the cost of about Rs. 2 lakhs now incurred, *but they have not taken into consideration the cost entailed in the publicity of a diversified character recommended by them. Conditions in this country are such that a complete abolition of Section 22(1) of the Act is not desirable.*

47. The majority have further recommended that returns of income must be filed by the 30th June or within four months at the end of the accounting period whichever is later. An extension of two months may be permitted on payment of interest, and beyond the period of six months from the end of the accounting year, penal provisions should stand attracted and there would be no appeal right. And in rare cases only time may be allowed with the sanction of the Commissioner of Income-tax, subject to interest payment and other conditions for security etc. *In my view these suggested changes are of a revolutionary character and are bound to create a position of dead-lock. The provisions expected to be made are so rigid that in practical consideration, they would stand ruled out.* Under the U.K. Income-tax Act, 1952, there is a specific provision made by Section 19 that every individual, when required so to do by notice given to him by the Surveyor, shall, within the time limited by the notice, prepare and deliver to the Surveyor a true and correct return in the prescribed form. The relevant section is reproduced below for ready reference:—

“19. Every individual, *when required so to do by a notice given to him by the surveyor*, shall, within the time limited by the notice, prepare and deliver to the surveyor a true and correct return in the prescribed form of all the sources of his income and of the amount derived from each source for the year preceding the year of assessment, computed in accordance with the provisions of this Act except that the computation of income shall be made by reference to the year preceding

the year of assessment and not by reference to any other year or period:

Provided that where the individual is chargeable to surtax and there is in force an election by him under Section two hundred and thirty-one of this Act to make a return of his total income to the Special Commissioners, the return required to be made by the individual under this Section shall be limited to a return of any income which is assessable under either Schedule D or Schedule E".

48. Extensions of time are allowed in proper cases and on merit in other countries without introducing an element of rigidity. In the United States of America under Section 6072, returns made on the basis of a calendar year have to be filed on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year have to be filed on or before the 15th day of the fourth month following the close of the fiscal year. Returns of Corporations have to be filed for the respective years on the 15th day of March following the calendar year and 15th day of the third month following the close of the fiscal year. Extension of time for filing the returns is allowed under Section 6081 of the Internal Revenue Code and the Secretary or his delegate is authorised to grant a reasonable extension of time for filing the return, declaration or Statement or other documents required by this title or by regulation. Except in the case of taxpayers who are abroad, no such extension would be given for more than six months. In the case of Corporations, an extension of three months for the filing of return of income-taxes is allowed automatically if an estimate of income and payment relating thereto has been made. Thus, in the case of Corporations a period of nearly nine months is available while in other cases a period upto 10 months is available. *The laws of the other countries do not exhibit the rigidity which is advocated by the majority.* Further, in the case of persons closing their accounts on the 30th June, a period of 12 months would be available, while in other cases the period would be smaller.

49. *The task assigned to the Committee is to recommend simplification but by recommending the charging of interest for a period of two months a further element of complication would be introduced.* Then again there is the question of the time required for the completion of the accounts of the branches at up-country centres as also the completion in cases where the transactions extend to various places in the country. Apart from this, the question of the time required in respect of cases of incomes over Rs. 50,000, for which the majority have recommended a compulsory audit, would also arise. *Even under the Companies Act, accounts have to be presented to the Members of the Company at such a date that not more than nine months' period from the close of the account year obtains.* Thus for corporations the respective legislation allows a period of nine months and it is a question whether Companies can submit their returns without the accounts being adopted at the Annual General Meeting. Such accounts would not be proper accounts and it would not be desirable on the part of the Department to proceed on the Returns made by Companies without the necessary completion, the audit filtration and adoption at General Meeting. *I would, therefore, recommend that the present position should not be disturbed and extensions of time should be given in appropriate cases considering the merits of each case. In any event a statutory regulation of a period of less than nine months is bound to*

create a state of utter confusion and also a dead-lock. If a smooth working were to be expected and the work entailed in the making of applications and granting of time were to be eliminated, the proper course should be not to be rigid in expecting Returns in all cases at a stipulated date. It would be better to allow accommodation upto a period of nine months from the close of the respective account years and a further extension of three months should be permissible without the introduction of an element of rigidity. If Returns are delayed unnecessarily and there is a deliberate attempt to delay matters, and such cases are those where even the advance payment has not been made, a stricter view may be taken and the needful done to impose penal interest or even penalty in cases of deliberate and wilful default.

50. *There also appears to be some misconception with regard to the legislation in the U.K. There is a fundamental difference between a statutory requirement to have returns pursuant to a general notice and a requirement for notification to the authorities by those who become assessable to income-tax. The requirement for giving such a notification has been unnecessarily confused in the past. The correct position, so far as the U.K. Law is concerned, is that in general no returns are required unless notice to file the same has been received from the assessing authorities. However, every person who becomes assessable to income-tax is required to notify the appropriate authority of that fact. So far as the first part of this observation is concerned, I would advocate the insertion of a section corresponding to Section 19 of the U.K. Act, 1952. As regards the second part, the provisions of Section 18A of our Act are sufficient. The onus on the assessee relates to the giving of the notice as to the chargeability but, once such a notice is given, returns of income should be required to be submitted only on the issue of specific notice. Thus there is a distinct difference between the existing assesseees and new assesseees. While new assesseees would have to give a notice, it would be more convenient to issue specific notices to existing assesseees and a smooth working can only be ensured by having a statutory provision for such notices being sent on the lines of the U.K. legislation.*

51. *The majority have ultimately given a modified recommendation in respect of the matter relating to the service of notices. They have recommended that service of individual notices by the Department should be no longer obligatory and forms may be sent to the assesseees before the 30th of April by ordinary post under a general certificate of posting. This recommendation virtually amounts to a recommendation of changing the existing provisions whereby it would not be necessary for the Department to serve a notice to every assessee either by hand delivery or by registered post. In substance, therefore, the recommendation of the majority amounts to changing actual service to mere issue of forms. The majority have further recommended that an assessee would be considered to be in default as not having filed the return if he did not file it within the time limit and did not show that he had applied for a return form to the assessing officer in time and the same had not been supplied to him. It may happen in many cases that return forms sent by the Department may not reach them and, therefore, they would be placed in a difficult position. Even if they applied to the authorities for the forms stating that these were not received, it would create unnecessary work both for the assesseees and for the Department.*

Under our existing legislation, Section 63 provides for matters relating to notices and their service. Section 63 reads as under:—

“63(1) Notice or requisition under this Act may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908.

(2) Any such notice or requisition may, in the case of a firm or a Hindu Undivided Family, be addressed to any member of firm or to the manager, or any adult male member of the family and, in the case of any other association of persons, be addressed to the principal officer thereof.”

Messrs. Kanga and Palkhivala, in their treatise of Law of Income-tax observe that where services are to be effected by post, it should be by Registered Post. Service by Registered Post on a firm at its principal place of business would be valid. The learned authors have made a very good analysis of the relevant issues and their observations will be found at pages 829, 830 and 831 of the fourth edition of the said treatise.

52. I may pertinently point out that according to Section 19 of the United Kingdom Income-tax Act, 1952, quoted previously, an individual notice has to be given to every taxpayer and such an obligation is on the Department. *I, therefore, recommend that individual notices ought to be given and Section 22(2) should specifically provide for this.* As I have already observed above, the requirement of the United Kingdom Income-tax Act is for informing the Department about liability to taxation and, once such information is given, the obligation for sending individual notices to assessees is put on the Department. Our Section 18A specifically provides for information to be given to the Department by new assessees when they become liable. *I also recommend that there should be a regular service of notice by hand delivery or by registered post instead of a mere issue of notice without proof as to service being there.*

Unduly long waiting

53. The recommendation of the Committee in this behalf has been ultimately included in the chapter relating to Public Relations but that recommendation is not complete as per the decision taken. *I would make an additional recommendation to the effect that if an officer finds that a case is likely to take more time than is anticipated or that he would not be able to take up any further cases he should immediately inform the assessee concerned or his representatives on telephone or otherwise.* In making this recommendation I am aware of the fact that at various places a workable arrangement is made by Income-tax Officers and the programme of their work is so arranged that the cases which the authorized representatives in his jurisdiction handle are spread out properly and matters are disposed of on a mutual adjustment basis. It is essential that such a healthy practice should be nursed and it should be the endeavour both of the representatives and the departmental officers to see that appointments are fixed subject to such mutual convenience but the convenience of the assessing officer should be the first consideration.

Sending out of a draft assessment order

54. I had made a suggestion to the Committee that they should make a recommendation about the Draft Assessment Order being sent to the assessees, particularly in those cases where the income assessed was

Rs. 50,000 or more. While the majority have not accepted this suggestion fully, they have recommended it partly by stating that computations should be supplied to the assessee. *I would strongly urge that Government should examine the question of sending draft assessment orders, because, in big cases, it would curtail a good deal of work for the Department and also clarify the position very considerably.*

Scheme for dealing with small income assessment

55. I have already made some general observations in the introductory part of the memorandum and have stated that this so-called scheme of simplification for small income-groups is really a misnomer. By its very nature, it cannot entail a statutory provision and, therefore, it has been suggested that it should be worked only administratively. *If that be the position and the statutory provisions remain what they are, it is a question whether a number of assessee with re-opening, full penalty and prosecution threat would be inclined to opt for it. It is doubtful what value could be attached to such opting in view of the statutory provisions being different.* Apart from this, the question of a practical consideration of the cases falling within the income group stipulated, arises. It is a scheme which would extend, according to the plan of the majority, even to cases where assessments are made under the proviso to Section 13. A number of such cases would distinctly fall beyond the 25 per cent margin or the sum of Rs. 1,500 stipulated for not reopening assessments under the scheme and, therefore, the very utility value, even on the basis contemplated by the majority, is doubtful.

56. I should like to invite attention to the observations made by the then Member, Central Board of Revenue, in his report on the reorganisation of the Income-tax Department made in the year 1956. On page 292, under paragraph 10.09 he observes as under:—

“10.9—Where book results have been rejected and estimates resorted to, appellate reductions have brought down the enhancements to the normal margin of 10—25 per cent. Appeals, where preferred, against assessments involving enhancement between 25 to 50 per cent have resulted in reduction of between 10 to 25 per cent; those involving enhancement of over 50 per cent have been reduced to about 25 to 40 per cent. The percentage of confirmations of such assessments is very small. It follows, therefore, that enhancements made at the Income-tax Officer level are substantially reduced in appeals, thus resulting in fruitless labour at both stages. To some extent this subtraction is inherent in the appellate procedure, but its magnitude in the Income-tax Department would appear to be rather abnormal. It does suggest that one man is employed by the Income-tax Department to add arbitrarily and the other to subtract arbitrarily, for nearly 50—60 per cent of assessments in small cases are based on estimates.”

57. *On the basis of this finding, it would appear that more than half the cases would be cases where it would be difficult to work the so-called small income-group scheme.* Apart from this aspect, the power to reopen assessment, after a full examination, every fifth year is likely to result in the same position that Income-tax Officers, to avoid criticism, would again resort to reopening of these assessments and taking the wide margin of adjustment reflected in the Report of the Member, Central

Board of Revenue, the reopening of cases would be in more than half the total number of cases and in respect of the other half, there would be no guarantee to the small taxpayer that he would not be harassed. While apparently showing regard for the small taxpayer, his position is made much worse by the suggestion that he would have to file at the very start a Wealth-statement and every fifth year he would have to repeat the process. One can well imagine the difficulties which these small assesseees would have to face if this so-called scheme of small income group were introduced.

58. Suggestions are also contained about the imposition of full penalties and even institution of prosecutions and small assesseees would rather prefer the normal course of assessment than fall into a scheme which would entail complications, severe penalties and harassment. The real remedy, in my view, is to raise the minimum taxable limit as per the suggestion already made by me in the opening portion of the memorandum. I would strongly advocate that this small class of taxpayers, which has been rightly described by Shri Ananthasayanam Ayyangar, as the middle-class, and which is the backbone of society, requires to be fully protected and after raising this limit, the Department may voluntarily adopt the procedure of accepting returns and making enquiries later on, but to say that there should be a positive scheme of the nature advocated by the majority is to propound a proposition which is really to the disadvantage of the small taxpayer. I, therefore, recommend that this suggestion of the majority be not accepted.

Estimated assessments

59. The majority observe that estimated assessments are made in those cases where either no accounts are maintained or, if maintained, the accounts are scanty and unreliable due to material omissions, suppressions, etc., and this is particularly so in most of the cases of professional people who do not keep any accounts worth the name. This is too loud a statement and, at the same time, too general a statement. It is not correct to assume that most of the professional people do not keep proper accounts. There may be a number of cases of this nature but the position cannot be said to be that general as viewed by the Majority. It is more in the cases of smaller income group and business income cases that such assessments are general. Moreover, accounts of professional people are quite simple and they reflect Receipts and Disbursements. In this connection, I invite attention to the observations of the then Member, Central Board of Revenue, in his report on the Reorganisation of the Income-tax Department that nearly 50 to 60 per cent. of assessments in small cases are based on estimates. The majority have stressed the need for a thorough examination and proper investigation in these cases. Thus they have contemplated a full examination even after recommending compulsory audit in respect of cases involving income of Rs. 50,000 or more. I shall separately comment on this aspect when I deal with the question of compulsory audit. The majority have further suggested that a standard questionnaire should be issued in cases of particular trades, industries and professions with a stipulation that these should be the basis for specific questionnaires for relevant items in individual cases. Even with a stipulation, the standardised questionnaires as a basis would create much more unnecessary work. I am not in favour of making any recommendation for a standard questionnaire being issued and I hold the view that particular queries may be submitted for particular cases without having such standardised questionnaires as a base.

Wealth statements once in four years

60. I have already referred to the reply of the Central Board of Revenue in this connection. While reiterating my observations made earlier, I recommend that a provision for this should not be made as it is bound to result in unnecessary work for the Department and undue harassment to the assessees. In appropriate cases, the assessing officers can and will certainly call for Wealth Statements under their existing powers.

Appellate authorities—Restrictions on

61. There is a recommendation by the majority to the effect that in their orders on appeal against the invoking of the proviso to Section 13 and the application of gross profit rates, the appellate authorities should properly and fully reason out the relief which they give so that the orders do not show arbitrariness in reducing the rates despite the fact that the invoking of the proviso is upheld. While I agree that every order should be a reasoned order, there should be no regulation of the work of the Appellate Assistant Commissioners by preventing a reduction in the rates, if they so think fit. Their discretion and judgement should be absolute and should not have any hindrance, interference or regulation.

Over-assessments

62. The Committee's recommendation in this behalf has ultimately been included in the chapter relating to Public Relations. I should like to give a more detailed consideration to this matter. In view of the recommendation made by the Committee, it is essential that the Department should find a complete remedy for this position. This can be done by keeping a complete record of the assessments made, the reductions given in appeal and finally sustained in the Tribunal and a full check-up of the position in this behalf should be made so that the Department can clearly find out the position in respect of particular assessing officers. If such highly pitched assessments or frivolous assessments are found and such assessments would be those as could not have been justified according to the records of the case, a very serious view should be taken by the Department and the Officer concerned must be severely dealt with. It is by ensuring such a position administratively that a smooth functioning of the assessment work could be achieved and at the same time public confidence restored. Public Relations would also be strengthened. I desire that Government take positive steps to ensure a proper set-up in this behalf.

Compulsory Audit of Accounts

63. After a good deal of deliberation, the majority have recommended that "in the interest of expeditious and proper assessment of assessees in the higher income group" audit of accounts in all cases of business, profession or vocation, where the total assessed income in any of the last three years exceeds Rs. 50,000 and in cases where the returned income for the first time exceeds Rs. 50,000 should be made compulsory in the Statute. I would like to examine these recommendations critically. The majority have opined that this step is being taken in the interest of expeditious and proper assessment of higher income group. I have already referred above to the recommendation of the majority that they think in terms of a thorough or rather a very proper examination of the assessment in the

group of cases of income over Rs. 25,000. *Evasions and concealments relate mostly to items and matters outside the books, and even in respect of transactions recorded within the books, a fraudulent attempt would not come to light without a thorough investigation. Therefore, the Department would examine accounts even after the scheme for compulsory audit is introduced.*

64. It is rather surprising that the majority should inspite of their own basic approach observed under the Tax Evasion Chapter that compulsory audit will facilitate detection of concealments and manipulation of accounts.

In this connection, the approach made by the Central Board of Revenue to the matter is an important material for consideration. In reply to the relevant question, viz., Question 16, the Central Board of Revenue have observed as under:—

"Large scale evasion has been detected even in cases where audited accounts have been furnished. In actual practice, the Auditor's certificate is confined only to the arithmetical accuracy of the results derived from the books of account and is no guarantee that the books contain a complete and true record of all the transactions of the assessee. While an audit of accounts is always desirable, a formal insistence of it by the Central Board of Revenue is apt to lead to the claim that the results disclosed by audited accounts should be accepted without question. The Board are, therefore, not in favour of insisting on the accounts being audited by Chartered Accountants."

I do wish that the majority had taken this observation of the Central Board of Revenue into consideration.

The position obtaining in the matter is such that, with very little utility value, the cost involved and the examination of accounts even after audit, the idea of even a voluntary audit has not gained any popularity.

65. There is another aspect of the matter which requires to be stated. *There is a fundamental difference between the audit of Company Accounts and other accounts.* In the former case, there is a separate legislation requiring the compliance of the various provisions, viz., of the Companies Act. Persons, managing the affairs of a company, have to function in a fiduciary capacity in their relations with the shareholders. In other cases, where the concerns are proprietary concerns or partnership concerns, such a regulation is absent and material particulars may not be brought to the notice of the auditor and unless the proprietor or the partner, as the case may be, chooses to give all the information to the auditor, the auditor would perforce have to rely on the information contained in the books and he would also have to rely on the proprietor or the persons who own the business. Moreover, conditions in our country are not such as to warrant a provision for compulsory audit. A number of concerns are owned and run by persons who are not conversant with audit requirements or even with the maintenance of accounts and records conforming to audit requirements. *Thus the question is not only one of extra expenditure to be incurred for getting the accounts audited, but simultaneously it is also a question of the increase in the establishment expenditure in the shape of maintenance of a regular accounts department and looking after the requirements of an audit and providing for it.* The majority hold the *view that such expenditure being allowable, at least half or even more*

would be contributed by the State. This is not a correct judgment of the matter because in the case of partnerships where the total income is Rs. 50,000 with four or five partners or even more, the income would be divided and the tax burden may not be of the order of the moiety of the income, but just bare 10 to 15 per cent or even less. It is a question whether it is desirable to impose this sort of unnecessary expenditure on assesses without any commensurate advantage to them. It will certainly not save time to the assessee; it would take more of his time and he would not be able to comply with the requirements of furnishing the returns within the rigid period of four months contemplated by the majority. Persistently the tax-payers have brought to the notice of the Government that such a requirement is not desirable and right from the time of the introduction of the 1951 Income-tax Amendment Bill, the matter has been so commented upon by responsible Chambers of Commerce and Industry in the country that it is not at all desirable to introduce this provision.

66. I should also like to state that in a number of cases, even without the audit of accounts, with a good background of the case, the assessing officers even now dispose of assessments without a searching enquiry. Cases involving large incomes have been so disposed of and assesseees and/or their representatives give such copious particulars from the records of the assesseees, that the assessing officer has to devote much lesser time and such a process, to my knowledge, obtains in quite a large number of cases. It is not the compulsory audit as such that would determine the quantum of work for the assessing officer, but it is the background of the case, the integrity of the assessee and his past records as also the conduct of the representative that determine the nature of enquiry in particular cases.

67. The Income-tax Investigation Commission and the Taxation Enquiry Commission went into the question and both these Commissions have not favoured the idea of compulsory audit. Shri Varadachari, Ex-Chairman of the Income-tax Investigation Commission in the memorandum submitted to the Committee, observes as under:—

“I am not in favour of compulsory audit of Chartered Accountants but assesseees will soon learn that it will save them time and trouble with the Income-tax Department if they get their accounts properly audited by qualified auditors. Assesseees must be made to understand that the auditor's certificate will be of little value unless it is clear from his certificate that he has been given full liberty and facilities for the audit. The certificate must not be disingenuous or ambiguous. It must clearly state what books or matters he has looked into fully and what matters he has been asked to take on trust without further examination.”

Thus while opining against a system of compulsory audit, Shri Varadachari made a mention about the full opportunity and facility for audit and matters being taken on trust.

68. In its memorandum submitted to the Committee, the Associated Chambers of Commerce observe as under:—

“The suggestions made in this and the preceding two questions exemplify the tendency of the Department to abrogate its responsibilities and leave decisions to other authorities. Under the provisions of the various direct tax acts, the Department has already adequate powers to deal with assesseees who do not

maintain proper accounts and if the assessing officer is not satisfied with the accounts as presented, it is always open to him to make a best judgment assessment."

69. * *

In this connection, I would like to reiterate my earlier observation that a non-company assessee may not choose to give all the information about his matters to the auditor.

70. The Institute of Chartered Accountants of India in their supplementary memorandum observe as under:—

"The Institute has already submitted its views which reflects the views of the majority of the members of the Institute. However, it must be admitted that there is a section of opinion in the profession which feels that the suggestion contained in Question No. 16, i.e., making it compulsory to get the accounts audited by Chartered Accountants in case of business income or assets of value over a certain limit is not practicable nor feasible. It would, therefore, be better to encourage assesseees to submit audited accounts with statements mentioned in reply to Question No. 10 along with the Return of Income to enable the Income-tax Officer to obtain authentic information without any loss of time. It is felt that it may not be possible to find Chartered Accountants in some of the up-country places and hence some of the members of the profession appear to hold this view."

The profession, I am quite sure, would like to examine the question from the dangerous and unexpected attacks it would be exposed to. Moreover, it is not a question of work being bestowed upon the members of a profession. The primary consideration in such cases should be the inconvenience and difficulty of the taxpayer. The present President of the Institute when he appeared before the Committee stated as under:—

"Here in our representations, we have said that it should be made compulsory that they should be compulsorily audited, but looking to the practical side of it, it appears that if it is on an optional basis and encouragement is given to the Chartered Accountants, they would get accustomed in this kind of a thing and then we can make it compulsory thereafter."

A past President of the Institute, when he appeared before the Committee, also concurred with the view expressed by the present President and during the examination the Board Member, who is a Member of this Committee, while discussing the circular, made the following pertinent observations:—

"Yes, the instructions are that the certificate should be accepted. One of the leading Chartered Accountants wrote to us enquiring what is the practical effect of this circular. The Chartered Accountant has to rely on the expenditure shown in the books but suppose something is not in the books at all what is his responsibility. Taking in view the present competition

* * Vide Para 2 of letter dated 30th Nov. 1959 from the Chairman of the Committee printed at the beginning of this Report.

for income tax practice, is it at all practicable for a Chartered Accountant to give such a certificate. The way in which this is given puts a sort of undefined liability as if everything is all right and yet it does not achieve any purpose. He has said that very few Chartered Accountants will agree to this."

71. *It is significant to note that while the question put by the Committee in the questionnaire related to compulsory audit for business income cases only, the recommendation of the majority now embraces all cases of business, profession and vocation.* Mention about professions and vocations was contained in the 1951 Amendment Bill and as a result of the representations then made, a proper view was then taken and even the Taxation Enquiry Commission, when sending out its questionnaire, restricted its reference to business income cases only. Accounts of professional men would be of a very simple character and they would reflect only the receipts and disbursements and I wonder as to why any certification in respect thereof is contemplated. Further, for declarations, a Justice of the Peace for his own purposes, need not go to another J.P. Is it now suggested that a Chartered Accountant, who is competent to audit the accounts of others and make a certification, should submit his own accounts and records to his competitor and that his own declaration as to the correctness should not be accepted? There is a pertinent observation in the report under the Appeals Chapter as under:—

"We doubt whether a tax-payer would be willing to get his financial affairs examined by persons who may be competitors either actual or potential."

72. *In view of the above observations, it is rather surprising that the majority should have thought in terms of recommending an audit of accounts of the professional people.*

The preparation and audit of accounts for non-companies is altogether of a different character. Any form of certificate prescribed would have to permit qualifications of the Certificate by Chartered Accountants covering all the relevant points and in consequence would lose much, if not all its value. The cost would be quite considerable and taking into consideration the extra cost involved in setting up a proper Accounts Department, it would impose an unnecessary burden on the tax-payer. The proposal, therefore, is not a proper one and I would urge that there should be no provision for a compulsory audit of accounts.

Government's Right to Appoint Chartered Accountants for further audit

73. *The majority have observed that such a provision is not necessary particularly in view of their recommendation for compulsory audit in all cases with income above Rs. 50,000. I would like to state my view that such a provision is not necessary because the initiative and responsibility of the Income-tax Officer should not be shifted to some outside agency. If the objective is to be achieved, it can well be done by recruiting Chartered Accountants in the Department itself, for purposes of both the matters discussed under Questions 16 and 17. It is not desirable to impose an outside agency on assesses and this type of work ought to be done by the Assessing Officer himself. It is he only who has all the advantage of the material basic data with him and the examination which he can conduct cannot be conducted by an outside agency, which would not naturally be equipped with the assessing and summoning powers of the Income-tax Officer.*

Simplified Forms

74. Members of the Committee had the benefit of considering the Forms prepared by the Committee's office. But I find that except for a new lay-out for the Income-tax Forms, the forms for Wealth-tax and Expenditure-tax do not appear to have been drafted. So far as the Income-tax forms are concerned, the office draft appeared to be more complicated as it introduced much more statistical information in the Return itself which can be gathered separately in the course of assessment proceedings and in case such Forms were to be filed in by assesseees, it would be very difficult for ordinary layman or for even business people to fill them in without having expert assistance. Particulars were introduced in such Forms for information to be had for properties, shares, securities, etc., held by persons in a fiduciary capacity and full particulars of such holdings with distinctive numbers were also contemplated to be obtained. The work involved would, indeed be colossal and there would be duplication of the information in a number of cases. There were several other particulars of a duplicating nature. *The majority have ultimately decided not to suggest any simplified forms and give drafts thereof.* They have, however, indicated broad lines on which the Return of Income forms be prescribed. They have not suggested any simplification of the Wealth-tax and Expenditure-tax forms although there was a persistent demand for this. I am of the view that simplified forms should be suggested. I have prepared drafts of the forms for Income-tax, Wealth-tax and Expenditure-tax and these were given to the members of the Committee for their consideration. I am not satisfied with the restricted nature of the decision taken by the majority. *I recommend the adoption of simplified forms drafted by me. There are three separate sets for (i) Income-tax, (ii) Wealth-tax and (iii) Expenditure-tax. These three sets of forms are annexed to this memorandum and have been indicated separately.*

CHAPTER III

ASSESSMENTS II

Part B—Special Problems

Allowance of Expenditure and Question of its Spreadover in respect of Business Premises taken on Lease or on Rental Basis

75. The majority, instead of considering this issue on the basis of an allowance of expenses, have made a recommendation in terms of depreciation allowance. Such an approach, in my humble view, is defective because there should be no question of depreciation in respect of premises belonging to another. According to the existing law, such expenditure is allowed to be deducted, but, on the analogy of the position obtaining in other countries, and particularly in the U.S.A. the question of option being given to the assessee to have a spread-over with such allowance in a number of years, deserves consideration. The majority have restricted their recommendation to lease-hold premises only, but with the regulations and rent control position, the same consideration should be given to premises taken on a monthly rental basis and in such cases where the tenant incurs expenditure, such expenditure should also be allowed. This allowance and the question of option for a spread-over should be one of the items of expenditure to be enumerated in the Act as per my suggestions made above under the head 'Simplification of Statutes'.

Development Rebate.

76. The Committee have made various recommendations in this behalf, but taking into consideration the difficulties experienced and the need for a proper statutory clarification, *I recommend that the change in respect of every item recommended by the Committee should be provided for by statutory amendment and it should not be left to be regulated by executive instructions.*

Matters relating to Section 23A.

77. The Committee discussed the fundamentals of this question as also various details relating thereto. The majority have not accepted the suggestion that the old provision, viz., Sub-sections 3 to 5 of Section 23A which were deleted by the Finance Act No. 2 of 1957, should be restored. It appears that they were not prepared to accept this suggestion unless the existing statutory percentage for distribution were increased. They have referred to a two-pronged suggestion to have the provisions and not increase the percentages; but, with great respect I may state that the percentages were so reduced to eliminate unnecessary work by stipulating a percentage which would take within the purview of the operation of Section 23A particular industrial concerns if they made distribution of a lower order. Therefore, the percentage is not one which can be linked on merit with the scheme itself. It is, on the other hand, a percentage which

smoothens the functioning of the scheme by keeping the percentage at a lower figure. As it is, the percentage has been increased by the Finance Act, 1959, and, therefore, there should be no question of a further increase by the recommendation of the restoration of the provisions of sub-sections (3) to (5) of Section 23A as it previously existed before the amendment made by the Finance Act No. 2 of 1957. I also recommend that the scheme be revived without having the institution of a Board of Referees. The orders should be passed by the Commissioners of Income-tax after hearing the assessee and such orders, to ensure a judicious consideration, should be allowed to be appealed against, appeals being preferred to the Income-tax Appellate Tribunal. This process will not involve any delay visualised by the majority.

78. There is an observation made by the majority to the effect that the existing percentages are, in their opinion, reasonable and adequate and leave enough balance with the company for meeting their capital requirements, for modernisation of plant, development, etc. This finding is not justified by the actual position obtaining; with an increase in the burden of taxation, companies have been compelled to pay by way of taxation much bigger amounts and they have been compelled to draw upon their past reserves also. When this is the position, it cannot be asserted that sufficient amounts are left for ploughing back and for modernisation of plant, development, etc. The observation of the majority that this is obvious from the fact that during 1958-59 only in about 3 per cent. of the assessments of Section 23A companies did need arise for levying additional Super Tax under Section 23A of the Income-tax Act is not intelligible. It signifies nothing. On the contrary, the correct position is that companies have been compelled to draw on past reserves as clearly indicated by me in paragraph 162 of this memorandum in the Chapter relating to Refunds.

79. As regards the question of relating the interpretation of smallness of profit to book profits and not to assessable profits, the majority have opined that this is being done in some cases but instead of leaving the matter to be regulated by administrative action, the clarification should be made in the statute itself, because, without so doing, unnecessary litigation is bound to ensue.

80. It is also desirable to enumerate the amounts which must be deducted in arriving at the amount of distributable surplus. * *

I would recommend the inclusion of amounts which are set aside and/or debited to the Profit and Loss Account under the requirements of the Companies Act, 1956, to show a true and fair position of a company.

81. I brought to the notice of the Committee the very difficult and perhaps an absurd position which would ensue by a literal interpretation of the provisions of Section 23A entailing a distribution out of capital. In a number of cases, higher distribution would have been made in earlier years and because of the technical interpretation a cent percent distribution for later years would take the total amount of de facto and notional distribution beyond the hundred percent profit of the company. I, therefore, suggest that the statute should make it clear that the provisions of Section 23A should not apply to cases where the total amount of dividends actually distributed and those notionally worked out for distribution go beyond the total nett available surplus of a company. As the majority have not accepted this suggestion, I recommend that the law should clearly provide for such non-application.

Speculation Losses and Hedging Transactions.

82. The Committee have made vital recommendations relating to this matter and have also made suggestions for amending the section so that transactions in all commodities are put on par and hedging losses against ready stocks of every commodity stand to be allowed under the Act. To ensure a proper working and correct interpretation I would also recommend that the various propositions accepted by the Committee and the changes recommended should be provided for in the statute itself to avoid any misinterpretation at the hands of the assessing officers. It is a fact that inspite of the categorical assurances given by the then Finance Minister, assessing authorities, at even higher levels, have taken a very technical stand totally brushing aside the assurance given and forgetting the spirit in which these assurances were given. It is all the more necessary, therefore, that the clarifications given by the Central Board of Revenue in the various circulars are summarised and the gist thereof embodied in the statute itself.

The Committee discussed the distinction in the phraseology of clauses (a) and (b) to the Second Explanation of Section 24(1) of the Income Tax Act. While one clause makes a reference to stocks held, the other does not. It was felt that the two clauses should be identical so that hedging losses in commodities other than those relating to stocks and shares could also be clearly brought within the purview of allowance. As this aspect is not clearly brought out, I specifically recommend that in expanding the Second Explanation to Section 24(1), the same phraseology be used to extend the allowance to hedging losses against stocks of all commodities putting them on par with shares and securities so that such losses whether they are against transactions of ready stocks or purchases are allowable.

83. The Committee fully discussed the difficulties experienced by assesseees by a peculiar interpretation having been made about the allowance of speculative losses and their set off. It has been clearly observed by the Committee that if an assessee earns speculation profits in a previous year and suffered losses in other business in that year and he had incurred speculation losses in the earlier years which had been carried forward and were due to be set off against the speculation profits of the previous year, the assessing officer sought first to set off the previous year's losses from the other business against the speculation profits before setting off the carry-forward losses against the latter. Consequentially, the recommendation should have been to the effect that if an assessee had earned speculation profits in a year, speculation loss, if any, carried forward from the earlier years or the speculation loss, if any, of that year should be first adjusted against these speculation profits before allowing any other loss to be adjusted against these profits. In the chapter to be finally included in the report, however, the recommendation is differently made and it is stated that if an assessee had earned speculation profits in a year, speculation loss, if any, of that year should first be adjusted against these speculation profits before allowing any other loss to be adjusted against these profits. Apart from the question of a fundamental change of this nature having been made by the majority, the fact remains that the difficulty in respect of accumulated losses and their carry-over consideration for a number of years after the amendment comes into force would still remain. Again, by administrative instructions the necessary relief can never be ensured. It is the experience of the taxpayers that by

leaving matters for executive action, an iniquitous position always continues and, therefore, taking into consideration the extraordinary difficulties experienced by the taxpayers I would recommend that the law should be amended to clarify beyond the shadow of a doubt that speculation losses, if any, carried over from earlier years or the speculation losses, if any, of a particular year shall be first adjusted against speculation profits of a particular year before adjusting any other loss against such speculative profits.

The report gives an extract from the speech of the Hon'ble the then Finance Minister but in my view there are two other portions from his speeches which are also relevant for consideration and I reproduce the same below:—

"It has always been the intention that speculative transactions in different commodities and in different markets would be regarded as one business and the profit and loss determined by combining all these transactions.

With regard to hedging, the Department will not be too particular about the quantities and timing, so long as it is satisfied that the transactions do constitute genuine hedging."

It will appear that the intention of the amendment then made was to allow all hedging losses in respect of all commodities provided they related to transactions against stocks held or purchase made whether they were of the nature of shares and securities or of stocks of any other commodities. The other matters also have been commented upon and it is very essential that the basis on which the amendments were made stands fully clarified in the statute itself and a positive amendment is made of the relevant provisions including those of a regularisation of clauses (a) and (b) of the Second Explanation to Section 24(1). I positively hold the view that a comprehensive amendment of the section is necessary to set at rest the uncertain position and the unwarranted interpretation which is being put on the existing legislation by the various taxing authorities.

84. I am making these suggestions subject to the fundamental approach relating to this question which I am indicating below.

Representatives of recognised Stock Exchanges made a very strong plea to the effect that there should be no discinction between speculative transactions and other transactions. The President of the Bombay Stock Exchange, when he appeared before the Committee, made an analysis of the position and invited the attention of the Committee to the memorandum submitted by that body to the Taxation Enquiry Commission. The majority have not accepted this suggestion, but it is my view that there is considerable force in the submissions made by the representatives of recognised Stock Exchanges.

85. In discussing the question of the futility of the amendment that was introduced, the Bombay Stock Exchange in its representation to the Taxation Enquiry Commission observed as under:—

"Futility of the Amendment.—The principal object with which the amendment was introduced was to protect revenue by checking the malpractice of buying and selling of losses. During the debate in Parliament, the Finance Minister admitted that there was no direct way of defining, for legal purposes, these

particular transactions. He then went on to explain as under how the amendment was to be made workable at all:—

‘We have proceeded by the method of excluding what we do not want to hit. In the Bill as it is drafted we have excluded hedging transactions, the common hedging transactions, that is a mill buys cotton and sells cloth. There are various other varieties of hedging transactions, and after discussions with the representatives of trade and business I have come to the conclusion that they are also legitimate. One category of transactions is the one I referred to just now; a man wants to protect himself against any loss in certain scrips he holds, but he sells some other scrips which he expects will have a reverse movement. The object is to save that kind of transactions.’

This correctly sums up the *modus operandi* of hedge transactions in forward markets. A holder of shares in one company anxious to protect himself against losses through price fluctuations generally sells other scrips which are current as a hedge and are freely marketable and negotiable. If a person holds shares of, say, Mysore Mills which at a particular moment do not have a ready market, he hedges by selling, say, Tata Steel Defds. or Bombay Dyeings which may then have a liquid and broad market. Big mercantile houses, by the very nature of their business, have to resort to such transactions by selling popular scripts to guard against losses in their holdings which they generally keep as a locked-up investment, either because there is no market for such shares, or for retaining control of the companies concerned, or for future capital appreciation. It is a fundamental object of the forward market in shares to provide a hedge to the genuine investor as well as a free and ready market for shares. A provision for this is made, as the Finance Minister explained to the House, by insertion of clause (b) in the proviso to Explanation 2 to Section 24(1) of the Income-tax Act. There is no doubt that Stock “Exchange losses suffered by an assessee when hedging against his investment are excluded from the definition of ‘speculation loss’ and can be set off by him against his other income. The question, what would happen if such losses were disallowed has been already answered by the Finance Minister in his speech quoted above. The further question is that if such losses must necessarily be allowed—which is what clause (b) provides—what is there to stop unscrupulous wealthy assesseees who have large investments of their own from ‘buying losses’ in the guise of hedge transactions against their investments and then claiming a set off? The amendment to Section 24(1) is supposed to cast a net especially for catching such tax-dodgers, but in fact the mackrel escape and only the sprat are caught. What then is the meaning of the amendment to Section 24(1)? There is no way of steering clear between Scylla and Charybdis. The fallacy lies in the presumption that the entire complicated trade of various forward markets can be defined in law by a process of exclusion through the insertion of some exceptions here and there. The addition of exceptions capable of giving some protection to *bona fide* trade inevitably make the amendment look like a sieve; and without

such exceptions, the trade itself is greatly disorganised. In the result, honest assesseees receive the short end of the stick in either case. The amendment to Section 24(1) with its clumsy and ambiguous provisions hits *bona fide* business at all points and probably the only person who is not worried is the tax dodger 'buying losses'."

86. Having discussed this, the memorandum makes an analysis of the issues involved and the harassment of assesseees as under:

"The fact that the Income-tax Act by a legal fiction empowers an Income-tax Officer to say that a particular loss is speculative and that its set-off cannot be permitted does not put back money in the pockets of an assessee to enable him to pay the tax demanded. The disallowance of the set-off of losses in respect of 75 to 80 per cent. of the *bona fide* trade of forward markets, which in one sense or another might be held to be speculative, can only cause harassment and impose a hardship and burden for which there is no sanction either in equity or justice and no warrant in the needs of the situation. It is for this reason that the amendment to Section 24(1) is condemned by all quarters as misconceived and mischievous, as needlessly provoking unhealthy litigation and upsetting the trade while failing in its main purpose of stopping the malpractice of 'buying losses', to the extent that it does prevail at present."

87. The memorandum under the heading "The Correct Approach" indicates the method and manner in which the problem requires to be approached and I am reproducing the relevant portion below for a ready reference. The last sentence which I have underlined is of crucial importance:

"*The Correct Approach.*—The coercion implicit in disallowing set-off of speculation losses is calculated to diminish speculation gains which ultimately give assesseees their livelihood and are the source from which Government revenue itself is derived. If that source is considered tainted, there is no object in Government regulation of forward markets. But to recognise, on the one hand, the importance of forward markets, and on the other to disrupt their efficient functioning by slowly garrotting *bona fide* forward trade through the medium of the Income-tax Act, is a contradiction in terms which cannot be easily reconciled. It is necessary to emphasise that the problem of buying speculation losses is quite capable of being solved by normal processes. No doubt it is true that losses do not bear on the surface any marks of their origin but they become significant from the point of view of income-tax evasion only when—

- (a) an assessee claims set-off of speculation loss against other income;
- (b) the assessee's other income is large; and
- (c) the proportion of speculation loss to the other income is large.

Such cases can be picked out at sight and this at once limits the field of critical investigation to a relatively small percentage of the total number of cases. Any extra expense and attention devoted to such cases is likely to be well rewarded. A determined tax-dodger may be expected to do his best to obliterate all evidence of the origin of the losses he has

bought. But the operation can be carried out only with the collusion of a number of other parties and by the Fabrication of books and documents at a number of places with the sword of Damocles hanging over his head in the form of treats of exposure and blackmail. In fact, where an organised market like the Stock Exchange is concerned, such an attempt all the way can rarely succeed. When the purchase and sale contracts resulting in the alleged loss are not found to be supported in the books of the brokers employed by the suspect assessee in the shape of corresponding transactions in the open market with other 'Bazar' parties, that is, brother brokers, that should be deemed to be *prima facie* evidence that the loss claimed is not genuine, unless indeed the assessee produces irrefutable evidence to the contrary. It should not be difficult to educate a hand-picked staff in the *modus operandi* of 'buying losses', and with such a staff in charge of the small number of suspect cases, the fraud on revenue cannot for long survive. The problem is essentially one of a vigilant, efficient and honest administration. *The responsibility for that rest with the Department and cannot be saddled on the shoulders of an overwhelming majority of honest assesseees who are interested or engaged in forward business.*"

88. Analysing the matter further, the memorandum reflects the position about the strong feelings of the Stock Exchanges. The statement is that 75 to 80 per cent. of the business on the Stock Exchanges and other forward markets was allegedly to be treated as speculative within the meaning of the amendment of Section 24(1) of the Act, 75 to 80 per cent. of the *bona fide* trade and the assesseees interested or engaged in such trade are penalised for the misdeeds of a handful of tax-dodgers in a manner without precedent in income-tax law and practice in the past and without parallel in any other part of the world. This was, in their opinion, a great wrong. It was submitted that the wrong must be righted by rescinding the amendments made in Section 24(1) of the Income-tax Act by Section 3(d) of the Finance Act, 1953.

89. *I see great force in these submissions and taking into consideration the fact that the correct approach is to find out the exact nature of transactions and deal with the matter on the basis indicated in the Bombay Stock Exchange memorandum there is no need to retain this sort of a provision on the statute book.*

90. Even under the Excess Profits Tax Act artificial transactions and transactions effected with a view to avoid Excess Profits Tax were regulated by specific sections, viz. Section 10 and 10A of the Excess Profits Tax Act.

91. These sections are reproduced below for ready reference:--

"Artificial Transaction

"Section 10. (1) In computing profits for the purposes of this Act, no deduction shall be made in respect of any transaction or operation of any nature if and so far as it appears that the transaction or operation has artificially reduced or would artificially reduce the profits.

- (2) If the Excess Profits Tax Officer is satisfied that any person has entered into or carried out any transaction or operation by which the profits have been or would be artificially reduced, he may, with the previous approval of the Inspecting Assistant Commissioner, direct that such person shall pay, in addition to any excess profits tax for which he is or, but for such transaction or operation, would be liable, a penalty not exceeding the tax evaded or sought to be evaded."

"Transactions Designed to avoid or reduce liability to Excess Profits Tax"

Section 10-A. (1).—Where the Excess Profits Tax Officer is of opinion that the main purpose, for which any transaction or transactions was or were effected (whether before or after the passing of the Excess Profits Tax (Second Amendment) Act, 1941) was the avoidance or reduction of liability to excess profits tax, he may, with the previous approval of the Inspecting Assistant Commissioner, make such adjustments as respects liability to excess profits tax as he considers appropriate so as to counteract the "avoidance or reduction of liability to excess profits tax which would otherwise be effected by the transaction or transactions.

(2) Without prejudice to the generality or the powers conferred by Sub-section (1), the power conferred thereby extend,

- (a) to the charging with excess profits tax of persons who but for the adjustments would not be chargeable to the same extent;
- (b) to the charging of a greater amount of tax than would be chargeable but for the adjustments.

(3) Any person aggrieved by a decision of the Excess Profits Tax Officer under this Section may appeal in the prescribed time and manner to the Appellate Tribunal."

92. Under the existing legislation Assessing Officers can and do certainly go behind the transactions entered into and in case they find anything fishy, they probe into matters and pin down responsibility on proper persons. In a number of cases there are instances of so-called protective assessments where assessments have been discharged both on the persons suspected of having bought losses and persons who are suspected of having obliged them. Such cases can certainly be dealt with on merit and where transactions of a magnitude are entered into and big losses are reflected without a past background or there are cases where normally such transactions did not obtain, the Department can and must certainly take action.

93. *With this analysis I would recommend that the amendments introduced by Section 3(d) of Finance Act, 1953, be rescinded and the position that existed before such an amendment be restored, so that there is no distinction made between the so-called speculative transactions and other transactions.*

Registration of Firms

94. The majority have opined that assesseees have to satisfy certain conditions laid down in the Income-tax Act for getting the "benefit of registration" and that the benefit flowing from such a registration can be

immense. It cannot be assumed that registration of firms is a concession. Legislations of other countries provide for record returns only in cases of firms and assessments are discharged directly on the partners and recoveries are made from them. It is not as if a registered firm is a legal entity. A firm consists of the partners who constitute it and it is the partners who legally constitute the firm. Obviously, therefore, the question of discussing the so-called benefits of registration should not arise. Actually, a number of witnesses made a suggestion that there should be automatic registration with a right of enquiring into the genuineness or otherwise of firms remaining intact in the hands of the Department. Several official witnesses also favoured this idea. The recommendation made by the Committee not to do away with registration is made mainly with the objective of enabling the assessing authorities to examine the question of genuineness or otherwise of the constitution of a firm at the very inception and I would, therefore, like to make an observation that it is this objective only which should be kept in mind and legal technicalities not affecting the substance of the matter should not be allowed to prevail. Instances were cited before the Committee of cases where registration was refused on flimsy and technical grounds although, in substance, genuine firms did exist. Such an approach is hardly desirable and from this point of view it was as well that the Committee could have thought in terms of abolishing registration altogether. But the Committee have come to this conclusion to ensure a proper check at the hands of the assessing authorities for determining the genuineness or otherwise of the firms, and that, to my mind, should be the primary objective.

Refusal of Registration on Technical Grounds

95. Although a recommendation has been made by the Committee to provide for technical defects to be rectified, the majority did not accept my suggestion that a specific provision should be made in the law itself as per the recommendation of the Law Commission. It is possible that assessing officers may not give this facility and as a result thereof, on technical consideration, registration may be refused. Taking my observations in the previous paragraphs into consideration, it is but appropriate that the position in this behalf should stand regularised by a statutory provision and it should not be left to be dealt with only by administrative action. Further, in determining the technical errors, a fetish of finding errors should not be made and only substantial defects which vitally affect the formation and constitution of the partnerships should be considered.

Matters relating to Section 34—Question of reopening assessments

96. The majority have not accepted my suggestion that the period of four and eight years stipulated in Section 34 should be reduced to three and six years. In this connection, I invite particular attention to the observations made by me in the comments relating to the Tax Evasion chapter. In a large number of cases assessments are delayed and are not taken up for consideration till they are likely to be time-barred. It is desirable that there should be an expeditious disposal so that cases are disposed of within two years and with a view to introduce an element of efficiency in administration, it is but appropriate that there should be a compulsion introduced by the statute on the assessing officers. I, therefore, recommend that the periods as per the suggestions made by me in the comments in the Tax Evasion chapter should be reduced to three and six years from four and eight years.

97. The Committee have recommended that the Income-tax Officer should intimate to the assessee the grounds on which action is proposed to be taken and the assessee is given ten days' time to send his reply. *I would suggest that this period of ten days is too short and a time of at least 21 days should be given for a reply in respect of such a vital matter.*

98. *I would also suggest that the question of amending this Section and making a provision on the lines of Section 41 of the U.K. Income-tax Act should also be considered. I am reproducing herebelow this section for ready reference:—*

"41.—(1) If the surveyor discovers—

that any properties or profits chargeable to tax have been omitted from the first assessments; or

that a person chargeable has not delivered any statement, or has not delivered a full and proper statement, or has not been assessed to tax, or has been undercharged in the first assessments; or

that a person chargeable has been allowed, or has obtained from and in the first assessments, any allowance, deduction, exemption, abatement or relief not authorised by this Act, then and in every such case—

(i) where the tax is chargeable under Schedule A, Schedule B or Schedule E—

(a) if the first assessments have not been signed and allowed, the surveyor shall amend the assessment and assess the person liable to the full amount, and at the full rate of tax, at which he ought to be charged;

(b) if the first assessments have been signed and allowed, the surveyor shall certify the particulars to the Additional Commissioners, who shall sign and allow an additional first assessment in accordance therewith, which shall be subject to appeal and other proceedings as in the case of a first assessment;

(ii) where the tax is chargeable under Schedule D, the additional commissioners shall make an assessment on the person chargeable, in an additional first assessment, in such a sum as, according to their judgment, ought to be charged, and any such assessment shall be subject to appeal.

(2) Any assessments not made at the time when the first assessments are signed and allowed shall, as soon as they are made, be added to the first assessments by means of separate forms of assessment.

(3) As respect tax chargeable under Schedule E, this section shall have effect subject to any regulations under section one hundred and fifty-seven of this Act for the time being in force."

99. *I am of the view that a provision like this would ensure proper justice, would avoid unnecessary and fishing enquiries and while providing for dealing with cases of escapement of income it would also regularise the position so far as the taxpayer is concerned by putting a square responsibility on the assessing authorities of making out a prima facie case showing the escapement of income, instead of basing the reopening on mere suspicion.*

100. *Apparent over-assessments.*

I had made a suggestion to the Committee that a recommendation should be made for having a provision to give relief in cases of apparent over-assessment, and a suitable provision on the lines of Section 66 of the United Income-tax Act, 1952, was indicated. I am reproducing this Section below for ready reference:—

- “66. (1) If any person who has paid tax charged under an assessment to income tax made for any year under Schedule D or Schedule E alleges that the assessment was excessive by reason of some error or mistake in the return or statement made by him for the purposes of the assessment, he may, at any time, not later than six years after the end of the year of assessment within which the assessment was made, make an application in writing to the Commissioners of Inland Revenue for relief.
- (2) On receiving any such application the Commissioners of Inland Revenue shall inquire into the matter and shall, subject to the provisions of this section, give by way of repayment such relief (including any consequential relief from surtax) in respect of the error or mistake as is reasonable and just :

Provided that no relief shall be given under this section in respect of an error or mistake as to the basis on which the liability of the applicant ought to have been computed where the return or statement was in fact made on the basis or in accordance with the practice generally prevailing at the time when the return or statement was made.

- (3) In determining any application under this section the Commissioners of Inland Revenue shall have regard to all the relevant circumstances of the case, and in particular shall consider whether the granting of relief would result in the exclusion from charge to income tax or surtax of any part of the profits or income of the applicant, and for this purpose the Commissioners may take into consideration the liability of the applicant and assessments made on him in respect of other years.
- (4) Any person who is aggrieved by the determination of the Commissioners of Inland Revenue on an application made by him under this section may, on giving notice in writing to those Commissioners within twenty-one days after the notification to him of their determination, appeal to the Special Commissioners.
- (5) The Special Commissioners shall thereupon hear and determine the appeal in accordance with the principles to be followed by the Commissioners of Inland Revenue in determining applications under this section and, subject thereto, in like manner as in the case of an appeal to them against an assessment under Schedule D, and the provisions of this Act relating to such an appeal (including the provisions relating to the statement of a case for the opinion of the High Court on a point of law) shall apply accordingly with any necessary modifications;

Provided that neither the appellant nor the Commissioners of Inland Revenue shall be entitled to require a case to be stated for the opinion of the High Court otherwise than on a point of law arising in connection with the computation of profits or income."

101. The majority have not ultimately accepted my suggestion on the ground that Section 33A provides remedies under certain circumstances and the said provision can secure the required benefit by the Commissioners exercising their discretion to condone delay freely. I am afraid this approach is not correct. Section 33A petitions are more or less mercy petitions and the general impression in the minds of taxpayers is that in rare cases only they get the benefit and when the statutes of other countries provide for such a remedy by the statute, I see no reason why in the statute of our country there should be no similar provision.

Bar of Double taxation under the Act

102. The majority have not accepted my suggestion in this behalf. I had suggested that there should be a specific provision introduced in all the direct tax acts to bar double assessment. This question has a previous background. When the 1938 Income-tax Amendment Bill was discussed in the Legislative Assembly, a definite mention was made about this matter. The observations of the late Shri Bhulabhai J. Desai are reproduced below:—

"And what was intended by my Honourable Friend, Mr. Kazmi, who was responsible for pressing this matter on my attention was that there would be nothing lost if in some appropriate place we could make it clear that throughout, the intention of the Act is what is admitted to be a rule of construction, and a rule to be applied in so far as the taxation of incomes is concerned—that the same income may not, in the same hands, be taxed twice over that is all that we meant, and so far as these parts of the Minute of Dissent were concerned, they were intended not so much as a dissent, though there is no other form of expression open to us—but as a guidance, as suggestions which if it were possible to carry out we should attempt to do so during the progress of the Bill. But they are not matters of such a nature as that on any of them in terms you could possibly have the Vote of the House. The only points which would be a matter for vote of the House by way of amendments to the Bill are those to which I now come."

A Minute of Dissent was submitted by the late Shri Bhulabhai J. Desai, the late Shri S. Satyamurthi, Mr. Muhammad Ahmad Kazmi, Mr. B. B. Varma and Mr. K. K. Malaviya to the Report of the Select Committee on the 1938 Income-tax Amendment Bill. I am quoting the relevant portion of the Minute of Dissent below:—

"The first point in this connection is that on a perusal of the Act and the Bill, we find that in some cases the underlying principle of a large number of sections and provisions dispersed in the Act is one and the same, but such principle is nowhere enunciated in its full form in the Act. If we incorporate such principles in specific provision—in as

general a form as is consistent with the other provisions—it would very much simplify and render easily intelligible many of the provisions of the Act. For example, a section recognising the principle “No income of a person shall be liable to be taxed twice in his hand” will be easily understood, will simplify many of the provisions of the Act, and will remove certain doubts arising from the interpretation of some sections of the Act.”

103. The Law Commission have also made a recommendation in this behalf and have suggested that a separate section *viz.* Section 319 should be inserted in the Act on the following lines :

Bar on Double Taxation under the Act—Income which has once been charged to income-tax or super-tax in the hands of any person for any assessment year shall not be charged again to income-tax or super-tax as the case may be in the hands of the same person either for the same assessment year or for a different assessment year.

104. In the United Kingdom a similar provision is contained in Section 65 of the Income-tax Act, 1952.

105. *A provision on the above lines is very essential and therefore I recommend that it should be embodied in every direct tax Act.*

Tax liability of non-residents and the question of Business connection

106. The majority have not accepted my suggestion that business connection should be defined as per the U.K. Income-tax Act, 1952. They hold the view that the position stands clarified as a result of the instructions issued by the Board and have not felt inclined to make a suitable clarification in the statute itself. It is essential that the substance of the instructions already issued should be analysed and embodied in a suitable summary form in the statute itself to avoid any chance of misinterpretation and misdirection. Various difficulties are experienced because of the matters being left for administrative action and administrative action only entails various considerations. *There is no reason why the status itself should not regularise the position in this behalf and bring it in line with the legislation of the U.K.*

In this connection, I should also like to make a mention of the fact that the want of statutory provision and clarification in this behalf is detrimental not only to the resident agents (treated as such) of the non-residents, but also the country's economy as a whole. *At a time when serious efforts are being made to secure foreign capital and foreign loans, it is but appropriate that the position in this behalf stands fully regularised.* The Central Board of Revenue tries to explain away the fears of foreign traders, but these attempts have not been very successful because the issues in question can be resolved properly only by the highest judicial authority in the country. *The correct remedy lies in amending the statute. It is also possible that by leaving matters for administrative interpretation and action it would be possible for the Department to tighten up matters by revising the procedure and interpreting instructions already issued in a particular way or by revising those instructions.* Even otherwise, it is a fact that many of the circulars issued by the Central Board of Revenue have not received that

respectful consideration at the hands of the subordinate authorities which they should and even the Committee have felt inclined to make an observation in that behalf. Analysing the matter in this way, I would recommend that matters be regularised by statutory amendment. If this is not done, there is bound to be a serious impact on the trade of India and on the securing of foreign resources, whether in the shape of capital or loans. In any event, I suggest that the law be amended by embodying a provision on the lines indicated below.

107. If the dealings between a Non-resident and a Resident are on the basis of transactions between principal to principal, such cases shall not be brought within the purview of Sections 42 and 43 and shall not be construed as amounting to a business connection unless the Resident has the legal authority and as a result thereof actually exercises such authority to enter into contracts on behalf of the Non-Resident or maintains stock of goods on behalf of the Non-Resident with a view to enable him to execute orders from the customers where also the contracts would be for and on behalf of the non-resident.

Cases where the dealings between a Non-Resident and a Resident are transacted in a bona fide manner through brokers or commission agents acting as such in the ordinary course of their business, no attempt should be made to invoke the provisions of Section 42 and 43 in such cases, subject to the stipulation that such a broker or commission agent should not be a person authorised by the Non-Resident to carry on a regular agency business for and on behalf of the Non-Resident or is a person who is a de facto agent for all contractual purposes of the Non-Resident.

Matter of Jurisdiction

108. In this connection I should like to observe that once the jurisdiction is exercised by a particular Income-tax Officer, the exercise of jurisdiction by another Income-tax Officer, should cease. The assessee should also have the right of agitating the fundamental issue about jurisdiction at any stage of proceeding. This is a pure question of law and a matter like this can be agitated at any stage of the proceeding according to the decisions of the various High Courts and even the supreme judicial authorities. I do not agree with the recommendation of the majority that the assessee ought to raise an objection about jurisdiction before filing the returns.

As regards the suggestion made in the Report about the examination of branch accounts by officers having jurisdiction over the places where the branches are situated, I should like to observe that the paramount consideration should be the convenience of the assessee and in case he desires that the accounts and records be submitted and examined at the headquarters, there should be no compulsion to have the accounts examined at these particular branches. The persons controlling the affairs of the companies or concerns would be at particular places; their accounts department would be also there and their legal and account-any advisers would mostly be at the place of their headquarters. To provide for examination of accounts at various branches would amount to creating extraordinary work for the taxpayers inasmuch as in particular cases accounts would have to be sent and arrangements made for deputing persons concerned to various places. This would entail extra expenditure also for the tax payers. I, therefore, do not agree with

the recommendation of the majority about the accounts being examined freely at the branches without the full concurrence of the assesses concerned.

Definition of income and definition of expenses

109. I have already commented on this and other matters relating thereto in the opening portion of my memorandum. However, I should like to make a specific mention of the fact that a decision taken by the Committee has ultimately not been incorporated in the Chapter to be finally included in the report by the majority. The Committee had decided that the loss or expenditure incurred after the cessation of a business but relating to its residual activities should be allowable to the extent of the profits but the majority have ultimately not included this recommendation and I do not find it in the chapter finally prepared for inclusion in the report. The only mention is about a restricted allowance of expenses. *In my view it is essential that a provision should be made in the law itself to the effect that losses and expenses incurred after the cessation of a business, whether they relate to the residual activities or to the activities of the business when it was conducted, should be allowed when the business is closed and in case the determination is made at a later stage, the necessary relief should be provided by a rectification order under Section 35 of the Income-tax Act.*

Allowances of expenses against income from salaries and other sources

110. The majority have not ultimately accepted my suggestion in this behalf. I had recommended that the concept of allowing expenditure on the test of wholly and exclusively should also be extended to allowance in respect of other sources as also in respect of salaries. *I am fortified in this view by the recommendation made by the Law Commission that the principle adopted for allowance of expenses in respect of income from business, profession or vocation should be extended for allowance of expenses to employees and to income covered under the head 'other sources'.* I may add that much of the difficulty would disappear if my recommendation about having a composite Income head and a composite Allowance of expenses is accepted and the allowance is made on the test of wholly and exclusively, without rigidity of income heads and allowance of expenses in relation thereto.

Mining Industry

111. The Committee discussed this question in detail, but the majority have not made a positive recommendation in this behalf. The recommendations of the Taxation Enquiry Commission as also the recommendations of the U.K. Royal Commission were discussed. These recommendations are summarised so far as the Taxation Enquiry Commission is concerned on pages 92 and 93 of the Report under paragraphs 24 and 25. The sum and substance hereof is to allow royalty and expenditure subject to certain limitations. But the recommendations of the U.K. Royal Commission are of a fundamental nature. *I suggest that the positive recommendations made by the two Commissions be considered and Government should take suitable action to provide for the necessary and equitable solution to the difficulties now experienced and the peculiar position obtaining for such assessments.*

Uniformity of Legislation—Gratuity to Non-Government Employees

112. There is a differential treatment so far as Government employees and non-Government employees are concerned. Under the first proviso to the Second Explanation to Section 7(1) a concession is given so far as Government employees are concerned. I do not see any reason for this differential treatment being given to non-Government employees. I am of the view that the concession should be extended to all employees, whether they are in Government service or not. The amount of allowance should, however, be limited to the maximum payable according to the conditions of gratuity which are applicable to Government employees.

Question of imposition of only penal interest under section 18A

113. Apart from the question of bringing new assessee on record, 18A collection is only a provision to ensure the amounts due in respect of taxes to be ultimately levied in time. Penalty as such is linked up with assessment proceedings. There have been a number of cases where assessing officers have imposed penalties in addition to penal interest amounts and such penalty amounts have been out of all proportion to the penal interest amounts. There have been cases where the penal interest would be of the order of Rs. 900 whereas the penalty amount would be of the order of Rs. 10,000. I, therefore, recommend that for Section 18A matters, only penal interests should be charged and there should be no penalty imposed.

Other Matters

114. Section 2(6A) defines the term dividend and the same has recently undergone certain changes. According to sub-clause (e), any loan taken by shareholders from companies would be deemed as dividend for purposes of the Act. Though the intention underlying this new provision was not to permit shareholders of private companies, circumventing the provisions of the Act by not having distributed sufficient amounts and by taking loans, in actual working the provision has created practical difficulties. One is that, although the party may repay the loan even before the declaration of the next dividend, he may still remain liable. This is, indeed, a great hardship. Similarly, although only one shareholder may have taken an advance and his share in the company may be negligible, the whole amount of advance may be treated as dividend in his hands. On a rational consideration of the provision, it is only to the extent of the share of a particular shareholder according to the number of shares he holds in the company that the provision should have effect and not to the artificial extent of the actual amount of advance. After all, the intention underlying the provisions is to check the tendency to take dividend in the form of loans. It is certainly not a provision to create an artificial liability. Actually, the law provides for exception in respect of cases where the amount of the loan is made good from the subsequent dividends when declared. There is no reason why a payment made earlier, even before the declaration of such dividend, against which the loan can be adjusted and the exemption secured, should not receive the same consideration. I therefore recommend that in such cases the Law should provide for exemption and/or adjustment. It is most unfair to treat the whole loan as a dividend irrespective of the stake which the shareholder has in the company. For his whole life time he may not expect to get any such payment by way of dividend and when the dividends are actually distributed, the process would result in double taxation, that is, taxation

in the hands of the person who took the loan to the extent of the difference between the loan and the amount of the dividend and the full taxation of the dividend payment in the hands of the other shareholders actually entitled to the dividend. This is one more instance of double taxation. I, therefore, recommend that the law should be so amended as to provide for the inclusion in the assessment of the shareholder of only a proportionate amount which he would be entitled to secure by way of dividend and not more, subject to the inclusion of a lower amount if the amount of advance of loan taken is less than the amount of such proportionate share. I would also like to say that these provisions do not appear to be fundamentally and legally sound. I, therefore, recommend that Government should have this legal aspect also examined.

Double taxation of registered firms

115. I invite attention to the observations made by the Law Commission in this behalf. These are reproduced below for ready reference:

"We would also like to draw the attention of the Government to another provision relating to firms which we feel is totally unjust. We are referring to section 23(5) (a) (i) of the Act, which provides for the levy of tax on registered firms in addition to the tax levied on the individual partners of registered firms. This is the least defensible provision of the present Income-tax law This provision for double taxation is without precedent, so far as we have been able to gather, in the history of incometax legislation, either in this country or in the other countries whose laws we have examined. To assess a firm in respect of its profits and to assess the individual partners again in respect of their shares of the firm's profits is virtually double assessment on the same individuals in respect of the same income. This type of legislation cannot be supported on any considerations of justice or fairness or any sound principle of taxation. It would work as a dangerous precedent. We appreciate that it is a matter of legislative policy how high the incidence of taxation should be; but there is no reason why resort should be had to pure and simple double taxation on the same individuals, in respect of the same income under the same Act, as a mode of raising the revenue."

116. I entirely endorse the recommendation of the Law Commission in this behalf and suggest that the provisions, that is the system of taxing Registered Firms under Section 23(5) (a) read with the Annual Finance Act should be abolished.

Question of charging bullion, jewellery, furniture etc. under one of the two acts viz., the wealth tax act or the Expenditure Tax act.

117. In my comments relating to the Tax Evasion chapter I have mentioned the observations made by Mr. Kaldor when he appeared before the Committee and stated that such items are items of value, and capital assets as such, and therefore the exemption of such items for purposes of the Expenditure Tax Act was correct. However, by the amendment made under the Finance Act of 1959, such items are now taxable both for purposes of Wealth-tax and Expenditure-tax. This is yet

another case of double taxation. Apart from this, one cannot understand how the same item can be an asset, that is something of value, and an item of expenditure, that is something which does not bring into existence something of value at the same time. The amendment made is against all canons of justice and taxing laws. *As such, I recommend that the respective items should be charged under the Wealth Tax only and should not be charged under the Expenditure Tax.* This observation is made by me of course subject to the recommendation that the Expenditure Tax Act should be abolished.

CHAPTER IV

APPEALS AND REVISIONS

Constitution of the Benches of the Tribunal

118. The majority have ultimately not accepted my suggestion that the President of the Tribunal should be authorised to constitute a bench of two Accountant Members or two Judicial Members whenever there is an unfilled vacancy of one or the other member or where either a judicial member or an accountant member is absent. The tax-payers and their representatives have been put to unnecessary inconvenience as a result hereof and a good deal of the time of the members of the Tribunal is also lost. *With a view to secure an expeditious disposal of cases the President of the Tribunal at his discretion may constitute such benches and cases assigned to such benches by the President may be heard by the bench so constituted. I recommend that such a provision should be made.*

Removal of the appellate Assistant Commissioners from the administrative control of the central board of revenue.

119. While the decision of the Committee is a positive one in drafting the report, the majority have observed as under:—

“We recommend that the Appellate Assistant Commissioners should be transferred from the control of the Central Board of Revenue to that of the Ministry of Law.”

In my view they have made a halting approach. The recommendation should read as under:—

“We recommend that to meet the widespread demand in this respect to have the executive and judicial functions definitely separated and to ensure that the set-up is one where justice is not only done but very clearly appears to be done, the Appellate Assistant Commissioners should be transferred from the administrative control of the Central Board of Revenue to that of the Law Ministry.”

120. *It is desirable to reason out this important recommendation instead of disposing of it by way of a mere recommendation.* This matter has been agitating the minds of all concerned for a considerable period of time. It is a fact that many Assistant Commissioners are not inclined to decide bigger cases in favour of assessee though the cases would be good cases for them and ultimately relief is given by the Income Tax Appellate Tribunal. The functioning under the Central Board of Revenue does create a position of hesitation. The matter has also received a measure of attention at the hands of the members of the Constituent Assembly and the Parliament. During the debates in the Lok Sabha on the Indian Income-tax Amendment Bill, 1952, very pertinent observations were made

by the members of the Lok Sabha. Shri N. C. Chatterjee observed as under:—

You may remember, Sir, that on one point the Commission was unanimous: that is, as to whether the Appellate Assistant Commissioners should continue to be subordinate to the department or should go directly under the Appellate Tribunal. The Bill, as it has emerged from the Select Committee, still continues the old unsatisfactory feature of the subordination of the Appellate Assistant Commissioners to the department. I still hope that the House will see that that is weeded out and the recommendation of the Commission is accepted. What did the Commission do? The Commission said—this is a very important point and I am reading from the report, page 317—

“There was some ground for misgivings that Appellate Assistant Commissioners might be anxious to please the executive heads of the department and that their decisions in appeals might, to some extent be influenced by this consideration.”

That was only natural; throughout India this misgiving prevailed and this misgiving even today prevails. Therefore, in the questionnaire that was issued by the Commission question No. 57 asked specifically whether these Appellate Assistant Commissioners should be removed from the control of the Central Board of Revenue and whether they should be placed under the control of the Tribunal or the Ministry of Law. Now, the interests concerned were practically unanimous in the answer to this questionnaire—at least to this portion and the report said in para. 318:—

“As regards the first point, opinion was practically unanimous that Appellate Assistant Commissioners should be removed from the control of the Central Board of Revenue.”

They further say—an Ex-Chief Justice of India, Justice Rajadhyaksha and a Member of the department were making this recommendation unanimously, I am reading from para, 319—

“We think that the experiment begun in 1939 should be carried forward and Appellate Assistant Commissioners should be removed from the control of the Commissioners and the Central Board of Revenue and placed under the Appellate Tribunal. Their leave, transfer and posting should be in the hands of the Tribunal.

We regret to see that this recommendation is not being implemented.

“.....How could it possibly be expected that the Appellate Assistant Commissioners vested with judicial functions, will discharge their duties properly, if you make their leave, their promotion, their future prospects and their transfer depend upon the sweet will of the departmental head?

“What they (the Income-tax Investigation Commission) are saying is: ‘Implement that directive principle of the separation of the judiciary from the executive.’

.....I quite feel that the Hon. Minister feels that Justice Varadachariar and his colleagues were right.

My Hon. and learned friend Mr. A. K. Basu in his dissenting minute has correctly said:

"The Appellate Assistant Commissioner who is the judge is considered adequate to represent the department—an unusual responsibility for a judge to undertake. That party really becomes a judge in his own cause. This is a perversion of judicial procedure and is against all cardinal principles of administration of justice."

121. *It is on a consideration of the lucid exposition of the matter made during the debates in the Lok Sabha and my personal experience of over thirty years that I have come to the conclusion that the Appellate Assistant Commissioners should be removed from the control of the Central Board of Revenue and it is for this reason that I have suggested the recommendation to be reworded in the terms stated by me above.*

122. *As regards the Income-tax Appellate Tribunal, the Committee have recommended that it should continue to function. My reasoning for retaining the present set-up and the continuance of the Income-tax Appellate Tribunal is that the direct tax statutes present complicated and technical points which require specialised knowledge, mainly of accounts and the appellate tribunal with its present composition of both judicial and accountant members is in a better position to discharge the onerous appellate duties in this regard than High Courts, which are over-burdened with work and which would not be a proper forum for discussion and decision on the questions of fact also. I would also like to mention with the greatest respect that the observations made by the Law Commission in their report and the criticism made relate possibly to the only cases quoted in respect of which a particular position arose. To the best of my knowledge and experience I would say that such types of cases cannot be said to be a generality regarding the functioning of the Tribunal.*

Composition of the Tribunal

123. *The majority have recommended that the President of the Tribunal should be a serving High Court judge who should be deputed to this Office for a fixed tenure. They have also recommended that as far as possible members of the Tribunal should be selected from the serving senior district and sessions judges for posts of Judicial Members or from Commissioners of Income-tax or Assistant Commissioners of Income-tax senior enough to be appointed as Commissioners for posts of Accountant Members. They should not be required to apply formally for these posts but the appointment should be on the basis of selection.*

I am not able to appreciate the full significance of this recommendation because it is not clear whether it is desired to amend the law to exclude members of the accountancy profession. If this were to be done, the whole basis on which the Tribunal was constituted would be vitally affected. As I have stated earlier, tax matters involve a consideration to a degree of accountancy matters and it is the accountancy talent that can be really helpful. Apart from this, when the Tribunal was constituted, the intention was to provide an agency which would inspire confidence in the members of the public, i.e. the tax-payers. It would not be correct, therefore, to make appointments of Commissioners of Income-tax or Assistant Commissioners of Income-tax because they are departmental people and would naturally have a departmental bias. There has been

considerable dissatisfaction with regard to this matter and even the Council of the Institute of Chartered Accountants of India has viewed with concern the tendency of appointing departmental persons as accountant members of the Tribunal. *Even if the intention of the recommendation were not to exclude the accountant members and to permit the appointments of Assistant Commissioners or Commissioners for posts, such a process also would considerably impair the very set-up of the Income-tax Appellate Tribunal which is expected to be an independent body in which the tax-payers can have confidence.*

124. It has been stated that it is not possible to get proper talent from the accountancy profession but the reasons are not far to seek. The status and salary of the members of the Tribunal is not sufficiently high as to attract proper talent. *The members of the Tribunal sit in judgment over the orders passed by the Commissioners of Income-tax and their status and emoluments should correspond at least to the status and emoluments of the members of the Central Board of Revenue.* The issues relating to this question have been discussed in the correspondence between the President of the Income-tax Appellate Tribunal and the Secretary to the Government of India, Ministry of Law, the then Honourable the Chief Justice of the Bombay High Court, the then Honourable the Chief Justice of the Calcutta High Court and the learned Attorney General of India. I am giving below some of the relevant extracts which will enable a proper consideration of the question:—

Extract from the letter of the President of the Income-tax Appellate Tribunal, to the Secretary to the Government of India, Ministry of Law:—

“You would perhaps agree with me when I say that it is becoming extremely difficult to recruit suitable persons on the terms offered by the Government. The result has been that there has been deterioration in the efficiency and lowering of the standards.....

The Tribunal hears appeals from the judicial orders passed by the Commissioner of Income-tax. The two Commissioners of Income-tax, Bombay and Calcutta, draw total emoluments of Rs. 2,250. As a matter of fact it is the Central Board of Revenue which is a party before the Tribunal. The salary of a member of the Central Board of Revenue is Rs. 2,250. The salary of a Member of the Tribunal, therefore, can in no case be less than Rs. 2,250..... I would suggest that the salary of the Member should be in the grade of Rs. 2,250-50-2,500.....The Government expects a person to leave his profession at the age of 45/50 years and join the Tribunal on a salary of Rs. 2,000. At the age of 55/58 years he will be asked to quit. On his retirement he will be only entitled to the Provident Fund....It is extremely difficult to start practice at the age of 58 years. Ordinarily, therefore, only such type of persons can be attracted to join the Tribunal who have either not much of a practice or who look forward to making money.When we discussed this matter with the Hon. Law Minister, he also appeared to be of the opinion that something has to be done to improve the conditions of service of Members of the Tribunal.”

Extract from the letter of the Honourable Chief Justice of the Calcutta High Court:

"The Income-tax Appellate Tribunal occupies a most important position among the Tribunals of the country.... The conditions of service which you mention do not appear to me to be at all calculated to attract suitable men to the Tribunal, either from the department or from the profession of Accountancy or from the profession of Law.... *So important is the position it (the Tribunal) occupies and so vast are the financial interests which are subject to its dispensation that inadequacy of the technical efficiency of its members would itself be a lamentable drawback, productive, it may be, of widespread consequences of a serious nature. Inadequacy of integrity would obviously be an even more serious matter..* The proposals which you intend to lay before Government appear to me to be very moderate and I can only hope that you will succeed in persuading them to accept your suggestions."

Extract from the letter of the Honourable Chief Justice, Bombay High Court:

"I have always been conscious of the extremely responsible position occupied by the Members of the Income-tax Appellate Tribunal. The Tribunal constitutes the greatest protection that the assessee has against the Department. Its decision on facts being final, the fate of the assessee is almost wholly in its hands. The High Court also must entirely depend upon the facts found by the Tribunal *and the advisory jurisdiction exercised by it can only have value and importance provided we have a body of men sitting on the Tribunal on whose competency, and integrity we can have complete reliance.....* If you want to recruit from the Bar I agree with you that it is impossible today to get even a second-rate or a third-rate junior on the salary of Rs. 1,800 to Rs. 2,000..... I have always looked upon the cutting down of salaries of men in high position as a totally false economy. *While the saving to the country in rupees, annas and pies is very small, the loss in efficiency, in honesty and integrity is colossal.* I feel confident that the opinion of every High Court will be unanimous on this point."

Extract from the letter of the Attorney General of India:

"I agree generally that having regard to the responsible position which Members of the Tribunal occupy and the nature of the functions they discharge their emoluments and terms and conditions of service call for alteration in the manner you suggest or in some similar manner. I agree that the matter is of considerable public importance and deserves immediate consideration."

125. It will be clear from the above extracts that two eminent Chief Judges of High Courts and the learned Attorney General of India have concurred with the view of the President of the Tribunal. *I recommend that to ensure proper functioning of the Tribunal, to draw the proper talent from both the professions of law and accountancy and to sustain the confidence of the tax-payers, the emoluments of the members of the Tribunal and the President be suitably raised according to the suggestion*

made by the President of the Appellate Tribunal and supported by three eminent persons.

126. As regards the recommendation of the majority that the President of the Tribunal should be a serving High Court judge, I must respectfully point out that this suggestion is not one which can find a practical implementation. Apart from this, it is an unhealthy precedent to create by debarring a member of the Tribunal to become the President thereof. The previous law in this behalf was that only a judicial member of the Tribunal could become the President and in my capacity as the President of the Institute of Chartered Accountants of India I took up the question with the Hon'ble Shri C. D. Deshmukh, Finance Minister of India at that time and after a full discussion he was kind enough to agree that this differential treatment should be done away with. Therefore in the 1952 Amendment Bill a positive clause recommending a change in this behalf was included. When the matter was considered by the Select Committee, a change was made despite the different view held by Pandit Thakurdas Bhargava, who was the Chairman of the Select Committee for the consideration of that Bill. Ultimately, a sort of a compromise legislation resulted by putting the wording of the section in such a way that the President of the Tribunal should ordinarily be a Judicial Member. The Honourable the Finance Minister during the debates on this Bill stated in the Lok Sabha as under:—

“.....There was a great deal of discussion in regard to the question of the President of the Income-tax Appellate Tribunal. In the Bill it was provided that the post of the President of the Appellate Tribunal should be open also to an accountant member and there was practically no difference in the appellate functions performed by an accountant member and a judicial member. The Select Committee thought it fit that the President must always be a judicial member. A statutory bar to the appointment of an accountant member as the President in any circumstances might create administrative difficulties and unnecessary discontent among the accountant members. I, therefore, welcome the amendment tabled by Shri Vinayak Pataskar to the effect that the President would ordinarily be a judicial member and in due course I would commend this to the acceptance of the House.”

It is but appropriate that I should quote from the minute of dissent submitted by Pandit Thakurdas Bhargava in this connection:—

“The Select Committee decided not to omit the word ‘judicial’ from sub-section (4) of Section 5A of the principal Act. In my humble opinion as between the Accountant Members and Judicial Members there should be no distinction so far as the post of the President of the Tribunal is concerned. It is invidious to make a distinction of this nature between judges who exercise the same powers and functions so far as the actual cases go. This point was considered at length by the Select Committee and it was brought to our notice that many of the Accountant Members of the Tribunal have a much longer standing to their credit than the Judicial Members and yet these Accountant Members have no chance of holding a post of President simply because they are Accountant Members. I fail to see why any inferiority should attach to any accountant member simply because he is an Accountant Member and I would therefore like that the amendment of the word ‘judicial’ from sub-section (4) should be accepted.”

Three other members of the Select Committee, *viz.*, Sarvashri R. R. Morarka, S. L. Dhusiya and P. Natesan expressed a similar view in the following terms:—

“We do not agree with the majority of the Select Committee that the President of the Income-tax Appellate Tribunal should necessarily be a judicial member. We are of the opinion that as proposed in the Bill the present invidious distinction between judicial and accountant members should be abolished. Once in the Tribunal, they all hold the same position and perform the same functions in the matter of deciding appeals and making references to the High Courts. A judicial member as such is not better qualified for discharging the more or less administrative functions which are vested in the President. An Accountant Member is equally well qualified to perform them and it does not seem equitable to debar him from presidentship.”

127. *The Accountant Members of the Tribunal have given an equal contribution and I would therefore recommend that the relevant provision of the Act and the respective provisions of the direct tax Acts should be so amended as to provide that any member of the Tribunal can be appointed a President thereof.*

Writ Petitions

128. I should like to comment in greater detail on this matter. *The protection of the fundamental rights of citizens is a very vital matter and such rights should not be tinkered with.* The position as regards writ petitions is peculiar to particular places in the country only, and the reasons for delays can be attributed to the lesser number of benches of the High Courts at the respective places. The particulars given by the Central Board of Revenue in this behalf are reproduced in the following statements:—

Statement showing the writ petitions filed and disposed of by the High Courts during 1958-59 and pendency as on 1-4-1959.

C.I.T's charge	No. of petitions pending as on 1-4-1958	No. of petitions filed during the year 1958-59	Total for disposal	No. of petitions disposed of during the year 1958-59		Balance as on 31-3-59	No. of assessments kept pending on account of writ petitions	No. of appeals pending on account of writ petitions	Approximate Amount of demand kept pending on account of writ petitions in 1958-59
				In favour of the Department	In favour of the assessee				
Madras	.	105	184	79	19	86	1	9	80,40,630
Mysore	.	33	47	22	2	23	..	..	1,50,000
Kerala	.	50	79	49	4	26	7	..	10,55,000
West Bengal	.	32	60	16	8	36	18	1	60,72,953
Calcutta	.	18	32	13	2	17	..	1	11,75,199
Calcutta (Central)	.	17	22	10	..	12	104	1	51,95,748
Assam	.	3	3	3	..	..	..	..	..
Bombay South	.	1	1	..	..	1	..	..	..
Bombay North	.	5	25	16	1	8	..	4	1,25,000
Bombay City I and II	.	21	39	17	9	13	6	..	16,19,000
Hyderabad	.	62	177	53	5	119	7	..	22,43,044
Bombay (Central)	.	10	11	5	1	5	2	..	1,15,14,000

I	2	3	4	5	6	7	8	9	10
Bihar and Orissa . . .	12	5	17	9	2	6	..	..	1,81,000
Uttar Pradesh . . .	187	63	250	49	11	190	21	7	56,27,000
Madhya Pradesh . . .	6	2	8	5	1	2	2	..	2,46,424
Simla . . .	7	4	11	4	1	6	..	..	..
Delhi . . .	39	12	51	10	4	37	150	6	21,78,556
TOTAL . . .	608	409	1,017	360	70	587	318	29	4,54,23,554

Statement showing the writ Petitions filed and disposed of by of the Supreme Court during the year 1958-59 and pendency as on 1-4-1959.

C.I.T.'s charge	No. of petitions pending as on 1-4-1958	No. of petitions filed during the year 1958-59	Total for disposal	No. of petitions disposed of during the year 1958-59	Balance as on 31-3-59	No. of assessments kept pending on account of writ petitions	No. of appeals pending on account of writ petitions	Approximate amount of demand kept pending on account of writ petitions in 1958-59
Madras	.	I	I	..	I	..	..	..
Mysore
Kerala
West Bengal
Calcutta
Calcutta (Central)	.	I	I	I	..	..	..	..
Assam
Bombay South	.	5	5	..	5	..	..	7,217
Bombay North	.	I	2	..	2	..	..	..
Bombay City I and II	.	I	I	..	I	..	..	43,590
Bombay (Central)	.	..	I	..	I	..	..	13,00,000
Hyderabad

I	2	3	4	5	6	7	8	9	10
Bihar and Orissa . . . . .	..	..	..	..	..	..	..	..	..
Uttar Pradesh . . . . .	..	I	I	..	..	I	..	..	61,338
Madhya Pradesh . . . . .	..	I	I	..	..	I	..	6	12,441
Simla	4	..	4	I	..	3	..	..	13,41,813
Delhi . . . . .	..	I	I	..	..	I	..	..	..
TOTAL	II	7	18	2	..	16	..	6	27,66,299

129. The maximum number relates to U.P. and the next in order are Madras and Hyderabad, the respective numbers being totals for disposals for U.P. 250, for Madras 184 and for Hyderabad 177. The number of such writ petitions for the Supreme Court of India is not large. In this connection, it must be realised that in nearly one-third of the cases, the contentions of the assesseees are sustained by the Courts and if amounts also were to be taken into consideration it would possibly give a picture that suitable relief in respect of very big sums was actually given by Courts of Law. In any event, if at particular places because of the lesser number of benches of High Courts a difficult situation does arise, the solution rather lies in expediting the work and having the writ petitions heard and decided expeditiously.

130. *The trend to remove the jurisdiction of the High Courts and rest in administrative tribunals is indeed a dangerous one—dangerous to the fundamental rights of the people.* Such tribunals, when constituted, do not make either a judicial approach or show a concern for the rights of individuals and it is a fact that a number of decisions given by the existing quasi-judicial officers have been set aside by appropriate writ directions or orders under Articles 226 and 227 and Article 32 of the Constitution.

In this connection it would be appropriate to quote from the judgment of a renowned judge of the Supreme Court:—

“The makers of the Constitution having decided to provide certain basic safeguards for the people in the new set-up, which they have called fundamental rights, evidently thought that it is necessary to provide also a quick and inexpensive remedy for the enforcement of such rights and finding that the prerogative writs which the Courts in England had developed and used whenever urgent...necessity demanded immediate and decisive inter-position, they conferred on the States' sphere new and wide powers on the High Courts of issuing directions or writs, primarily for the enforcement of the fundamental rights and also for 'any other purpose' were included with a view apparently to place all High Courts in India in somewhat the same position as the High Court of the King's Bench in England.”

131. So far as the legislation of United States of America is concerned, taxes are levied through the agency of laws enacted by legislative bodies. The power of the Congress to legislate for the Federal Government is prescribed by the Federal constitution. The ultimate determination of whether a statute is valid under the constitution or not rests with the Court. No matter how desirable it may be from an economic social or administrative view point, a tax may not be levied if it is held to contravene constitutional limitation.

132. With the above analysis I believe that the position stands stated for not disturbing the fundamental rights of citizens.

Improved methods of work for appeals and additional appeal rights.

133. There is a recommendation to the effect that the Appellate Assistant Commissioners should not set aside assessment orders except in cases where the circumstances leave them no choice in the matter. It should particularly be ensured that setting aside of assessments is not

sought by the Department or the appellants for merely gaining further time or to gain a chance to put in additional evidence. I should like to observe that a rigid regulation of the discretion of the Appellate Assistant Commissioners is not correct. I would, therefore, recommend that an attempt by the Department or the appellant to gain more time should be discouraged and therefore in such cases where the facts so emerge the Appellate Assistant Commissioners may refuse to set aside assessments and their discretion should remain unfettered. As regards the question of adducing of evidence the Appellate Assistant Commissioner should have full discretion and he may disallow only such evidence which the appellant wilfully and deliberately withheld at assessment stage.

In addition to the items contained in the recommendations made by the Committee, I should like to add the following:—

- (1) *A refusal to pass an order under Section 35 should be appealable.*
- (2) *Every order relating to Section 18A should be appealable.*
- (3) *All orders relating to Section 23A and relevant matters should be appealable.*
- (4) *An order passed under Section 23B should also be appealable.*

134. *The report does not state the reasons for the specific items relating to the recommendation for additional appeal rights. I should like to comment upon each of these items below:*

- (1) There are several instances in which Income-tax Officers do not rectify assessments in spite of the fact that the matters fall within the purview of Section 35. It is therefore necessary that a refusal to pass an order under Section 35 should be appealable.

The Department has always felt that orders passed under Section 35 are mere rectifications of mistakes and therefore should not be appealable. With the new shape which Section 35 has taken and the fact that under the guise of an apparent rectification a substantial modification may be attempted by the Income-tax Officer and such a course of action may entail a writ petition, if the assessee has the resources and agencies to file them, or might entail a total abrogation of the rights of the assessee, it is essential that every order passed under Section 35 should be made appealable.

- (2) Several fundamental issues are covered by the various subsections of Section 18A and in respect of many issues appeal rights do not exist. It is but appropriate that in respect of every vital matter affecting an assessee he should have the right of an appeal and therefore every order passed under Section 18A should be appealable.
- (3) The present law does not provide for an appeal against the cancellation of registration of the firm under Rule 6B of the Income-tax Rules. This is not at all fair to the taxpayer and the want of an appeal right would prejudice his other rights in respect of the computation of income and therefore it is essential that an order cancelling registration of the firm under Rule 6B of the Income-tax Rules should be made appealable.

- (4) It appears that there is no provision for enabling an assessee to file an appeal against an assessment resulting in an order of assessment whereby the deemed amount of dividends is included in his assessment. Even otherwise, in respect of matters relating to inclusion of deemed dividend whereby loans and advances to shareholders of private limited companies are also deemed as dividend, there would apparently be no appeal right except through the challenge which the assessee may make in the assessment itself. It is essential that for all such matters the assessee should be provided with respective rights of appeal.
- (5) According to the present law, a person may be wrongly treated as an agent of a non-resident under Section 43 and the only process which he can adopt is to file an appeal against the assessment when made treating him as an agent. Such a position creates unnecessary complication and work both for the department and the assessee. If there is a straight appeal provided, the issue could be decided even before the assessment is made and in case the order of the Income Tax Officer treating a resident as an agent of the non-resident is not sustained, the question of an assessment would not survive. In this light it is but appropriate that the order under Section 43 appointing a person as an agent of a non-resident should be appealable.
- (6) The order of an Appellate Assistant Commissioner refusing to condone the delay in filing appeal is not at present appealable. Thus, by merely stating that the appeal is not competent or that the appeal is out of time, the Appellate Assistant Commissioner may apparently deprive an assessee of his inherent right of appeal. Although the Income-tax Appellate Tribunal in some cases has sustained this right of appeal of the appellant and has restored the appeals on the files of the Appellate Assistant Commissioners, it is but appropriate that there is not the semblance of a doubt left with regard to such a vital issue and therefore it is but appropriate that a positive provision should be made in the Act permitting an appeal to be filed against an order of an Appellate Assistant Commissioner refusing to condone the delay in filing an appeal and dismissing the appeal as not competent for that reason or for any other reason.
- (7) If a firm or an association discontinues its business, the partners or members thereof continue to shoulder the responsibility of taxation and yet in respect of an order passed under Section 44 fixing liability in respect of such discontinued firm or association, there is no right of appeal. It is but appropriate that where responsibility and liability are attached to a particular entity, that entity should have the right of appeal in respect of orders passed.
- (8) In determining the income of the firm and in showing its allocation amongst its partners, a different view might be taken by the assessing Income-tax Officer and the allocation may be so made as to adversely affect one or the other partner or all of them. It would also affect the personal assessments of each and every partner. Such an order which is not specifically appealable at present should be made appealable

to provide the necessary right for the firm and the partners thereof.

- (9) It is doubtful whether, in substance, the orders under Section 25(3) and 25(4) are appealable. It may be that by disputing the inclusion in the partners' cases or in the successor's cases or in the relevant cases the remedy may be had but the ends of justice would be met only by having a statutory provision specifically stating that orders passed under Section 25(3) and 25(4) should be appealable.

Collection of taxes in dispute.

135. In this connection the Committee considered the position obtaining in other countries. In the United Kingdom collection of tax relating to the amount of disputed income is statutorily held in abeyance on first appeal till the appeal decision is given. In the United States of America no taxpayer is required to pay the additional tax if he desires to contest a determined deficiency on income, asset or gift before a tax court until the Court Judgment becomes final. *Although a recommendation to have our legislation on the lines of the legislation of United Kingdom and the United States of America has not been made by the Committee, it is very essential that the executive authorities, keeping in view the position obtaining in these countries, exercise their discretion very sympathetically and give time and facility in such a way that the want of legislation for appeal rights in this behalf does not result in harassment to assessee.*

Varying Interpretations—Want of interpretation and remedy.

136. I had suggested to the Committee that a recommendation be made for having fundamental questions of law relating to the direct tax acts referred to the Supreme Court of India through the President of the Income-tax Appellate Tribunal either on the motion of an assessee or a recognised chamber of commerce or trade association or *suo moto* on the action by the Central Board of Revenue. The majority have ultimately decided to make a recommendation in this behalf in the following terms:—

“As regards uniformity of interpretation the stage of appeal before the Appellate Assistant Commissioners the present procedure of issuing copies of instructions of the Central Board of Revenue to them should continue but these however will not be binding on them. As regards the Appellate Tribunal we suggest that where on a question of law involved in an appeal before it varying judgments have been given by different High Courts, the President of the Tribunal may on a request made to him refer the question directly to the Supreme Court for a decision”.

I would say that no instructions as such should be issued to the Appellate Assistant Commissioners but copies of interpretation circulars may be made available for information. As to the nature of the recommendation I make a different approach. *Correct interpretation by the highest judicial authority in the land is of crucial importance.* There is unnecessary litigation going on in a number of cases at various levels and very difficult situations have to be faced both by the Department and by the

taxpayers It would indeed be very helpful to all concerned if in respect of fundamental issues the matters were placed for a correct interpretation before the Supreme Court of India and I recommend that where an application is made by an assessee or by a recognised chamber of commerce or association in respect of a general question affecting all taxpayers, the President of the Income-tax Appellate Tribunal may refer it for the verdict of the Supreme Court of India and there should be no objection to such a reference being made on the basis of particular issues emanating from particular cases, thus giving a generality to the fundamentals in question. Similarly, the Central Board of Revenue, on its own or on a representation by any taxpayer or by a recognised chamber of commerce or trade association, should readily agree to have such references made and even suo moto action by the Central Board of Revenue should be permissible but in such cases a working arrangement should be so made as to enable a taxpayer's representation being made through a recognised chamber of commerce or through the Federation of Chambers of Commerce.

CHAPTER V

COLLECTION AND RECOVERY

Companies taken into liquidation.

137. Mention has been made about the fact that in many instances companies were taken into liquidation with the purpose of thwarting attempts at collection of tax by the Department. This finding is not justified, because except for a casual mention having been made about such a position existing in particular cases, full information or evidence in respect of the matter was not before the Committee. *I am not inclined to accept the proposition that such a position obtains generally.*

In discussing the question of effective arrears the majority have not accepted my suggestion that the amounts mentioned in items 4 and 6 of the respective table would also include those relating to very heavy assessments and a good portion would relate to cases where the assessments were pitched too high and the demands were beyond the capacity of the respective assesseees to pay. This position requires to be clearly stated and therefore I am making a specific mention hereof in this memorandum. In fact it can be broadly stated that both belated assessments as well as over-assessments are responsible for a very major portion of the existing arrears. It is for these reasons that I have made the clarification referred to above.

Section 18A—Distinction between old assesseees and new assesseees.

138. The Committee have agreed that a prompt completion of the assessment in such cases could reduce the period of default under Section 18A(8), and that it is not fair to treat assessee to be in default by a mere inactivity on the part of the Department and penalise them for the so-called default. But the majority have not accepted the suggestion for a statutory amendment and have come to the conclusion that the thing could stand redressed by the exercise of discretionary powers to levy penal interests. *I do not agree with this finding and am of the view that the position requires to be regularised by a statutory amendment so that there is no harassment caused to the assesseees and they get the necessary redress automatically without having to apply for a merciful discretionary consideration. Further, where the returns of income have actually been submitted in new cases, but assessments are not completed, such cases should be treated on par with cases of existing assesseees so that the obligation for sending demand for advance tax would be on the Department itself.*

The Committee had decided to recommend that notice in respect of existing assesseees for advance payment should refer to tax alone and there should be no necessity for mentioning the income. A similar position would automatically obtain in respect of the estimates to be made by the assesseees. Ultimately; the majority have also indicated the need for mentioning the total income. *I am, however, of the view that a rounding off of the amount of tax is better than the calculation,*

of an exact amount in relation to the total income, and the default and penal interest should better relate to the amount of tax instead of relating it to the amount of income. By so doing meticulous calculations and waste of man-hours would be avoided both for the taxpayers and for the department. In the case of existing assesseees their sources of income and previous income figures would already be on the files of the department. In this light I would modify the recommendation by stating that the notices in respect of the existing assesseees should refer to tax alone and there should be no necessity for mentioning the total income.

Recovery of tax from companies in liquidation and question of priority

139. The majority have recommended that Section 530 of the Companies Act should be modified to the extent of allowing preferential payments of one year's assessments if assessed for a period prior to the winding up notwithstanding that the assessment was made subsequent to the winding up. They have further recommended that statutes should be amended so as to secure recovery of tax in the case of companies in which the public are not substantially interested within the meaning of the Section 23A without any time limit. In my opinion these recommendations of the majority are against the fundamentals of justice and there is no parallel to this type of legislation anywhere else. Apart from this, a provision like this, if introduced into the statute, would create a definite sense of fear in the minds of all engaged in business, commerce and industry and it would be a definite detriment to the smooth running of the commercial activities in the country. There is no reason why the ordinary and correct concepts should be disturbed. The majority have gone to the extent of including, for purposes of their wider recommendation, even non-private companies coming within the purview of Section 23A, which would include those companies where nearly a moiety of the share capital might be held by the members of the public and the shareholding may be so broad-based that there might be hundreds or even thousand of shareholders. In such cases it is indeed a very wrong thing to pin down responsibility of this nature. Both the recommendations are not justifiable and therefore I express my dissent in respect of the same. At the same time, I would like to stress the issue that it is more the departmental efficiency that is necessary for regulating such matters. I can see no reason why the Department cannot act in good time and cannot act well. Provisions like these put a sort of a premium on want of efficiency and want of action in time.

Personal liability of shareholders of Companies.

140. The majority have recommended that in case of companies in which the public are not substantially interested within the terms of Section 23A of the Income-tax Act, the liability for direct taxes should first fall on the Directors and then on shareholders in proportion to their holdings.

The above recommendation of the majority proceeds on the assumption that a limited liability company is an agency formed and utilised for purposes of evasion. Several witnesses have stressed the issue that such an approach is entirely wrong. A number of memoranda submitted to the Committee also make a mention of this aspect.

The Taxation Enquiry Commission gave a full consideration to the issues involved and they came to the conclusion that these matters were very difficult matters for being resolved. The recommendations in this behalf are contained in paragraphs 63, 64 and 65 on pages 209 and 210 of their report. These are reproduced below for ready reference:—

“63. Power to recover taxes from the shareholders.—Another suggestion that has been placed before us is that the Income-tax Department should have a right to recover taxes from shareholders when the tax cannot be recovered from the company or, at any rate, from a company which has gone into liquidation, for a period of one year after the distribution of assets. This suggestion runs counter to the whole conception of a company as a separate legal and economic entity from its shareholders and cannot obviously be entertained in relation to companies in which the public are substantially interested. We have, however, been informed that there are several instances of closely-held companies where assets have been sequestered by the shareholders and the company is put into liquidation before income-tax assessment is completed.”

“64. Fixing personal liability on shareholders.—In 1949 an amendment was suggested to Section 44 of the Income-tax Act proposing to fix personal liability on the shareholders of private limited companies in respect of taxes assessed on the income of the companies which would not be recovered from them. The introduction of such a procedure was opposed on the following grounds: (i) it militates against the principle of limited liability; (ii) it is difficult to justify a procedure for the collection of taxes from private limited companies distinct from the one for recovery of taxes from public limited companies; and (iii) such powers may be used to recover taxes even in cases where, due to no fault of the management, the company's resources are insufficient to meet its liabilities.”

“65. There is considerable force in the above arguments and yet the possibility of avoiding the payment of tax by making use of the closely controlled company is real. We, therefore, think that, subject to adequate safeguards, it is proper to accord a different treatment to private limited companies. Accordingly we recommend that the tax due from a company should be recovered from the shareholders only when the company goes into liquidation and if it is a company in which the public are not substantially interested. Even as regards liquidation we would suggest that the recovery should be effected only if the Commissioner of Income-tax is personally satisfied that liquidation has been undertaken with a view to avoidance of tax. In both the cases, appeals should be allowed to the Appellate Tribunal.”

141. It will appear from the above quotations that the Taxation Enquiry Commission made a very halting recommendation. They recommended that *subject to adequate safeguards* the tax due from a company should be recovered from the shareholders, *only when the company goes into liquidation* and if it is a company in which the public are not substantially interested. They further observed that even as regards liquidation, recovery should be effected only if the

Commissioner of Income-tax was personally satisfied that liquidation had been undertaken with a view to avoid tax and in both the cases, appeals should be allowed to the Appellate Tribunal.

142. Despite this recommendation of the Taxation Enquiry Commission the majority have thought it fit to go much beyond and create a vicarious liability and that too for persons who would have nothing to do with evasion of tax or acquisition of income in their hands. *The matter is one requiring to be dealt with on a different premises altogether. It is the person, who misuses his position of fiduciary capacity in a company, who alone must be responsible for the accounting of the tax liability relating to ill-gotten gains made by him, by exploiting his position of a fiduciary capacity in relation to a company.* The Income-tax Investigation Commission, while dealing with such cases, found an inherent difficulty in pinning down responsibility on concerns on this very ground. Further, in the cases of companies which are not private companies and yet they come within the purview of Section 23A, the shareholding may be so broad-based that there would be thousands and thousands of shareholders, as already pointed out by me in considering another issue above. The Directors of such companies may be total outsiders and it may as well be that the manipulations or the acquisition of ill-gotten monies may be at the hands of one or two particular individuals who need not necessarily be persons controlling the affairs of the company as such. *Taking these factors into consideration, it is wrong to think in terms of putting responsibility on persons who neither get the income in question nor any share thereof nor have anything to do with the evading activities. Placing responsibility on another amounts to imposition of a vicarious liability.* Even as regards private companies where there are different families participating in the formation and functioning of such companies, one particular individual of one particular branch may enter into particular transactions and it is he alone or the particular branch who should remain responsible for the taxes relating to such ill-gotten gains.

In view of the observations made above, I am not able to agree with the recommendations of the majority and suggest that these recommendations should be allowed to the Appellate Tribunal."

Recovery in respect of taxes relating to assets transferred.

143. The majority's recommendation is to the effect that where it was not possible to recover taxes from the assessee in respect of the incomes aggregated under Section 16(1) (c) or 16(3) of the Income-tax Act the Department should have the right to proceed against the legal owner of the assets in respect of the share of tax payable on account of the inclusion of the proportionate income, etc. from such assets. Their recommendation further indicates that in a case where the assessment has resulted from a finding of fact that the transfer was a mere benami transaction effected with an intent to evade tax, no such restrictions are necessary. In such cases after the assessment has become final, i.e. after the ownership of the property has been finally decided in the assessment proceedings, the Assessing Officers should proceed against the property held benami for realising taxes due from the real owner. The right of the aggrieved party to proceed in a Civil Court by filing a suit under the Code of Civil Procedure should not in any way be adversely affected by this procedure and the findings of the Court should be binding on the Department as well.

As regards the first part of the recommendation made by the majority I have to observe that the Department should not think in terms of recovering the taxes both from the transferor and from the transferee. If the Intention is to relate the recovery to the asset and not to the person, it is only the asset from which recovery should be made. And in case it is transferor, i.e., the person who transferred the asset, he alone should remain responsible. In case the law is amended to pin down the responsibility relating it to the asset instead of to the person, there can be no objection to it. But the recommendation is to have a two-fold remedy in the hands of the Department. Apart from this, the question of the right of the transferor to reimburse the amount of tax for purposes of making payment has also not been discussed. If such a right were to be given, the Department would automatically secure the tax from the transferee by the exercise of such a right. In such a case there should be no question of imposing a Gift Tax by treating the reimbursed amount as a sort of a gift. In the absence of such a clarification and a clear provision, an adjustment on the alternative line indicated would not be equitable. In the light of these observations I suggest that either the alternative formula may be examined by Government and implemented or the status quo may be preserved.

144. As regards the other suggestion, I would say that it offends the principles of natural justice. After all the finality as to ownership of the property can be determined on proper evidence to be adduced by all the parties concerned and it is only a Court of Law which can pronounce a correct opinion in that behalf. The recommendation of the majority to the effect that the right of the aggrieved party to proceed in a Civil Court by filing a suit under the Code of Civil Procedure is not to be adversely affected does not give a proper solution inasmuch as the taxpayer would be compelled to defend his title instead of the Department having the issue decided at its initiative properly. The Income-tax Officer, in his capacity as an assessing Officer and acting in an executive capacity cannot be a judge for these matters. His decision would be of a prejudicial nature and would vitally affect the fundamental and inherent rights of the real owners. And it would be wrong to compel a real owner to have his right forfeited at the hands of the taxing official and then to have to defend his real title. I, therefore, dissent from the recommendation made by the majority and suggest that no change is required to be made and the position should be such that ownership should be determined by Courts of Law after hearing all the parties, i.e. the de facto owner, the real owner if he has evidence to prove his real ownership and other parties, if any, who might have a title or interest in the property.

Penal interest and penalty in cases of default.

145. The Committee considered the position obtaining in the United Kingdom where interest is leviable only if payments are delayed beyond the period of 3 months from the due dates, the amount of tax payable exceeds £. 1,000 and the amount of such interest itself exceeds £.1. The Committee also considered the position that the assessing Officers do not grant sufficient time for payment of taxes and notices of demand were often sent giving a very short time for payment, and a recommendation has been made to the effect that in all cases a month's time from the date of the service of the notice should be given for payment of the taxes. But in a case where the assessing Officer is satisfied that during the period the assessee is likely to alienate his assets with a view to defrauding Government, he may with the previous approval of

the Commissioner of Income-tax reduce such period as may be considered proper. Keeping in view the position obtaining in the United Kingdom I make an additional recommendation that no interest should be charged on sums below Rs. 10,000. The amount of deficiency in respect of which interest should be charged should relate to actual deficiency as ascertained after deducting from the total demand the amounts paid under Section 18A and/or Section 23B and after adjusting all refunds due to the assessee in respect of his various direct tax assessments. Further, there should be no penalty in respect of cases where penal interest is chargeable. I also invite attention to my general observations which I have made under the relevant heading in the chapter relating to Tax Evasion.

Attachment of shares in Joint Accounts and freezing of Joint Accounts.

146. The majority observe that under the present provisions it is not possible to issue a garnishee order in respect of amounts of the assessee held in a joint account. They have, therefore, agreed that it should be possible to attach the share of an assessee in such accounts also and have consequently recommended that a provision should be made for enabling the Department to attach such joint accounts. Fundamentally, this recommendation offends against the principles of natural justice. One cannot understand as to how, without a proper enquiry as to real ownership of an account, a part of it can be attached just because the name of a particular party appears in the account as a joint holder. The majority have, however, observed that it should be ensured that cases where joint accounts are held by persons in a fiduciary capacity, for instance, as trustee or where the account is really that of the other joint holder (or holders), such accounts are not attached and, in that light, they have recommended that provision should be made for enabling the Income-tax Officers to freeze such joint accounts on issuing a modified form of the present garnishee order. They have also recommended that simultaneously notices should be given to the assessee as well as to the other joint holder or holders to show cause within 2 weeks as to why the joint accounts should not be attached and, after hearing the parties, the Income-tax Officer should determine whether the whole of the account or part of it belongs to the defaulting assessee and if he decides that it does, he must pass an order determining the share of the assessee in the account and also issue a garnishee order in suitable terms to the party in whose books the accounts stand and a copy of the order should be sent to the parties concerned. They have further recommended that an appeal should be provided against such an order.

147. The majority desire that it should be ensured administratively that the Appellate Assistant Commissioners hear such orders within a month of their institution. *These recommendations run counter to the main proposal about the power to straightaway attach shares in joint accounts.* Apart from this aspect, the matter requires to be dealt with on a practical basis. Freezing of accounts straightaway would dislocate the whole working machinery so far as the respective account holders are concerned and, in many cases on a mere suspicion and without justification a freezing or even an attachment order may be passed and, in respect of the latter, there would be no remedy available excepting for a writ petition in a court of law and, in respect of the former, the matter may drag on for a pretty long time i.e. even for months together. The administrative protection of hearing appeals would be of no use at all as, with the delays which normally occur for appeal proceedings, there would be no guarantee of the appeals being taken up in time. The

whole procedure about attaching shares in joint accounts, and at the same time, providing for freezing and issuing show cause notices, submissions, hearings, etc., entail fundamental issues and while the first part of the suggestion would rule out the freezing process and the Officers would be more inclined to attach shares in accounts straightaway, so far as the other suggestion made by the majority is concerned, the whole process would be a lengthy one and it would create great difficulties for account holders in general. There is no reason why the general working and smooth functioning of business activities should stand paralysed for the misdeeds which may be found in rare cases. A provision like this would have considerable impact on commercial activities in general and banking activities in particular. *I am, therefore, totally opposed to the suggestions made by the majority in this behalf and I consider these suggestions as impracticable and amounting to denial of natural justice. I would also stress the issue that an attempt to make provisions like these amounts to putting a premium on Departmental inefficiency and want of action in time.*

Denial of Liability by Garnishee.

148. The majority have recommended that the present law should be modified to provide that even where a garnishee on whom a notice is issued disputes or denies the liability, the account in question is frozen and in such circumstances the Income-tax Officer should be empowered to file a suit in the Civil Court to establish the true facts and obtain a decision and then decide whether he should proceed to enforce the attachment or cancel the notice served on the garnishee. The process of freezing an account and then taking the matter to a court is bound to entail long delays. The majority have not suggested any remedy as to what should happen for the period intervening and whether an abnormal situation should be allowed to continue for a period of time. There is no reason why a vicarious liability of this nature should be pinned down on a third party. Moreover, the question of contractual obligations between real owners who would be wrongly considered as benamidars for some other parties who are the assesseees would be a matter for material consideration and in such cases, on the assumptions by the Department, third parties would be unnecessarily dragged into courts of law. *In this light and for the reasons mentioned in the immediately preceding paragraph, I am opposed to the suggestion made by the majority and I recommended that all these suggestions be not accepted.*

Contractors.

149. In respect of this recommendation by the Committee, I should like to add that in case there is a failure to effect such deductions resulting in a loss of tax to the State, the paying authorities should be treated as assesseees in default to the extent of the sum equivalent to the amount of tax loss or $2\frac{1}{2}\%$ of the total value of the contract whichever is lower. *This is a recommendation which was thought of by the Committee but it has not ultimately been made. I, therefore, desire to add this additional recommendation on my own under this heading.*

Sale of Shares attached.

150. The majority have recommended that it should be statutorily provided that if the existing shareholders or directors do not come forward to purchase shares of private limited companies (which might have been attached by the Department for their dues) on the basis of the fair value

determined according to the provisions of the Wealth-tax Act, the Department should have the right to sell the shares by auction and the purchasers should be registered as shareholders of the company, notwithstanding any provision contained in the memorandum and articles of association of the company.

This is one more example of the extraordinary recommendations thought of by the majority. *In my view the matter is again one falling within the purview of the Companies Act and I expected that the Committee would accept my suggestion to have the matter regulated under the Companies Act by providing for a right to the Department to go in appeal to the Company Law Administration for refusal of transfer of shares as in the case of transfer of shares of public companies and, in such cases, the decision of the Company Law Administration should be treated as final.* Such a provision would ensure for the Department a transfer of shares in the name of the President of the Republic of India or his nominee. *In the light of these observations I suggest that Government should accept my recommendation instead of accepting the recommendation made by the majority which, to my mind, creates an artificial position and amounts to a regulation of Company Law matters by taring statutes.*

Recovery of arrears of tax by proceeding against the property held in the name of a benamidar

151. I have already commented on this issue, but I should like to further observe that mere accounting of income or mere claim to a particular property cannot and should not establish an ownership right. These matters are matters which should be dealt with under the common law and there should be no attempt to regulate the ownership rights under the taxing statute. *In this view I express my dissent from the view of the majority that after assessments in such cases have become final i.e. after the ownership of the property has been finally decided the Income-tax Officers should have the power to proceed against the property held benami in respect of arrears of any tax due from the real owner.*

Central Collecting Agency.

152. While the recommendations in this behalf have been taken by the Committee collectively, I have certain qualifications to indicate. I am not prepared to hazard an opinion that additional expenses are not likely to be much more than the figure estimated for 1959-60. The question of extra cost is one which should be examined critically and the question of utilising the State agency for the period of transition should also be considered.

CHAPTER VI

REFUNDS

New Scheme of Company Taxation.

153. The only matter in respect of which I have to make my comments under this chapter is the new scheme relating to taxation of income of joint-stock companies and dividend income in the hands of the shareholders. *The majority, in my humble opinion, have not done full justice to this important matter and I feel that it was because of the steps already taken that they did not make a fuller approach.* In fact, even Government did expect the Committee to make a fuller analysis and great expectations were raised in the minds of the taxpayers that the Committee would suggest a much simpler formula. During the course of the tour which the Committee arranged for examining witnesses at various centres, this vital matter was fully discussed even after the new proposal in the last Finance Bill were announced and even after they were finalised and took a statutory shape. A number of Chambers of Commerce and Associations also wrote to Government in this behalf as also to the Committee. The majority have referred to the Federation of Indian Chambers of Commerce & Industry and have stated that the new scheme has been welcomed by them as a positive step towards simplification of the system of taxation of companies and their shareholders. It is but natural that a move for simplification would certainly be welcomed by the taxpayers, *but the significant observations made by the Federation itself in its memorandum No. F.2716/Fin/1 dated the 30th March 1959 addressed to the Secretary to the Government of India, Ministry of Finance, a copy whereof is on the Committee's records, has, it appears, not received that attention of the majority which it deserved.* The following are the significant observations made in the memorandum:

"The new scheme of taxation of company profits and dividends is said to simplify the procedure for assessment etc. While no doubt it would be simpler than now, still it would be necessary for companies to deduct tax at source. They would be in effect agents for collection of tax. Also shareholders will have to get their dividends grossed up in their assessments as before and also get credit for the tax deducted at source. The question of simplification of taxation of dividends in the hands of companies and shareholders is presently engaging the attention of the Direct Taxes Administration Enquiry Committee and probably they would be able to suggest a more simplified and acceptable method."

In their memorandum addressed to the Secretary, Direct Taxes Administration Enquiry Committee, being Memorandum No. F. 3178/Fin./42(1) the Federation state as under:

"Further the new scheme is said to simplify the present procedure of grossing up of dividends. However, it would be still necessary for companies to deduct tax at source from dividends at

the rates of 30% for individual shareholders and 45% for company shareholders. The companies are in effect agents for collection of tax at 30% or 45% as the case may be. Apart from the complications and difficulties which it would create in share dealings and in other matters, it increases the work of the companies themselves. The shareholders will also have to get the dividends grossed up as before in their assessments and get credit for the tax of 30% or 45% as the case may be of the tax deducted at source. The old process would still continue both in regard to deduction by the companies and the grossing up procedure in the hands of shareholders. The only simplification is that the rate of grossing up has been fixed and is no longer variable. The very process of deduction and grossing up involves certain procedures which a small shareholder does not usually avail of and, therefore, in most cases, the refund due for the tax collected at source is not claimed by the small shareholder assessee. In the circumstances, the Committee believe that the only solution by way of simplification will be to do away altogether with the obligation to deduct tax at source by companies and to tax whatever dividends have been received by the shareholders in their hands at the time of their assessments. This, in their opinion, is the only logical method for simplification of the present procedure of grossing up which will avoid all difficulties and complications."

Very pertinent observations have been made in the concluding portion of the extract given above, and a very clear mention is made of the fact that the only solution by way of simplification will be to do away altogether with the obligation to deduct tax at source by companies and to tax whatever dividends have been received by the shareholders in their hands at the time of their assessments. This is, according to the Federation, the only logical method for simplification of the present procedure of grossing up which will avoid all difficulties and complications. And yet, the majority observe as if the Finance Act amendments had a full measure of approval by the Federation. There are many pertinent observations about draw-backs in the memorandum referred to by the majority and these have been omitted.

154. In their letter addressed to the Secretary to the Government of India, Ministry of Finance, dated the 8th April, 1959, by the Indian Cotton Mills' Federation, being letter No. 756, the said Federation stated that the new proposals were so far-reaching in character that some more time would be necessary to study the exact implications of the proposed changes and how they would affect the company finances. They further observed that the Direct Taxes Administration Enquiry Committee was also considering matters of Company Finance including simplification of the grossing up provisions and it was felt that proper consideration of the new structure of company taxation would be facilitated after this Committee's recommendations became available. They further requested that the status quo be maintained for one more year. Copies of this letter were furnished to the Members of the Committee and to the office of the Committee during discussions.

155. Printed copies of a Study issued by the Indian Merchants' Chamber Economic Research & Training Foundation were also supplied to the Members of the Committee and to the office of the Committee. This brochure is

included as a separate appendix to this memorandum. *The Indian Merchants' Chamber had made specific suggestions in this behalf and had recommended a specific formula for a full simplification.* The relevant portion of the suggestions made will be found at pages 4 and 5 of the printed memorandum submitted by the Chamber to the Secretary of the Government of India, Ministry of Finance, being memorandum No. 798, dated 14th April 1959. Copies of this memorandum were given to the Members of the Committee and to the office of the Committee during discussions. This printed memorandum is also included as a separate appendix to this memorandum. I should like to reproduce some of the important observations herein for a ready reference:

"My Committee feel that any scheme which does not completely do away with the deduction formula will not ensure a full simplification of the procedure relating to taxation of companies and dividend income. My Committee, in the circumstances, are of the view that it would be better if the first stage of the implementation of the scheme is considered as and when the full implications have been worked out and the matter has also been examined by the Direct Taxes Administration Enquiry Committee. It is possible that this Committee may be in a position to evolve a more simplified formula and it may also suggest a way whereby even the deduction of tax at source can be done away with."

156. *The Bombay Shareholders' Association, as also some other bodies made a similar approach and it was, therefore, to be expected that the Committee would give a fuller consideration to the basic issues.*

157. *During the examination of the various witnesses, the formula suggested by the Taxation Enquiry Commission was fully discussed and actually it was advocated for an examination and to show reason why that formula was not acceptable. Some of the members of the Committee, in their examination, focussed particular attention on this formula. This formula and the scheme of company taxation have been discussed under Chapter X at pages 149 to 159 in the first 25 paragraphs of that chapter. The sum and substance of the suggestions made emanates from the observations made in paragraphs 18, 21 and 22 which are reproduced below for a ready reference.*

"In order to get over the administrative and other difficulties mentioned above, we would suggest the adoption of the method described below. The essential feature of this method is that, when a company declares dividends, it will deduct income-tax at the maximum rate from gross dividends, distribute the net amount to the shareholders and pay the tax to the credit of Government. Adjustments are then made in the course of the Company's income-tax assessment, so that the total amount which it has to pay out by way of taxes and dividends is the same as under the present law."

Suggestion regarding
alternative procedure for
taxing companies and
their shareholders.

"In certain circumstances the gross dividends may exceed the total income of the year. This may happen because the company draws upon accumulated undistributed profits of prior years which have already suffered tax, or the excess dividends may come out of capital receipts or may be due to the book profits being higher than the assessable profits on account of accelerated depreciation not being adjusted in the

company's accounts. Where taxed profits of earlier years are available an adjustment will be made in the company's assessment by deducting the income-tax on such profits from the total demand on the company; this will ensure that the same profits are not taxed twice. For deciding the amounts of prior year's profits available, the excess of gross dividends over total income will, in the first place, be attributed to the undistributed profits of the immediately preceding year which have been carried forward unappropriated; and the balance "(if any) to the year preceding that year; and so on."

"If the excess dividends come out of the other sources indicated, this procedure safeguards the revenue against the grant of credit to the shareholders for tax which was never paid by the company."

158. The summing up of the recommendations is stated by the Taxation Enquiry Commission in paragraph 24 as under:

"The adoption of the above method will simplify calculations as no grossing will require to be done. It will not disturb the present liability of the company and the shareholder which will continue to be exactly the same as under the old method. The revenues of the Government will also not be affected. It will, however, involve some changes in the manner of preparing dividend warrants, as, in future, it will have to be made obligatory for the companies to show the amounts of gross and net dividends separately in the dividend warrant."

In view of the above position, I had requested the Committee to give a full consideration to the formula of the Taxation Enquiry Commission. But this formula has not been discussed by the majority. The suggestion made, or rather the alternative formula suggested by the Indian Merchants' Chamber is, more or less, the formula suggested by the Taxation Enquiry Commission with an improvement that the deduction of tax from dividend payments should be totally done away with and dividends should be taxed directly in the hands of the recipient shareholders.

159. I do not agree with the findings of the majority that this is a question of incidence of taxation. The formula suggested by the Taxation Enquiry Commission, as improved upon by the Indian Merchants' Chamber, is merely a full simplification of the procedure, at the same time ensuring no inconvenience, harassment or disadvantage to the taxpayer. I must, therefore, respectfully point out that the majority have merely ignored the vital issues for a fuller simplification and have felt content with the existing legislation.

160. As regards the merit of the scheme, full attention was given by various Chambers of Commerce and Industry and it was pointed out that the main features of the scheme were as enumerated by the Finance Minister in the Explanatory Memorandum to the Finance Bill, 1959, and the objective was to get a simplification not entailing any extra burden in respect of company profits and dividends in the hands of the shareholders.

161. Simplification would be of a two-fold character i.e. removal of the complication of determining the effective rate of tax payable by a company and the assessable income to arrive at the grossing up formula and refund applications by shareholders whose income is such that it

results in a net refund or a full refund. *It is only the first part which has been resolved and that relates to the difficulties of the companies and not to the large number of shareholders. It also means simplification for the department. The real simplification would be one for the receiving shareholders and the Committee as a whole have already made a recommendation to the effect that even under the previous scheme substantial refunds, leaving marginal amounts with the Department, should be given.*

If this is the recommendation there is no reason why a further step to have a complete simplification, should not be had. From the figures emanating from the statistical data contained in the 1957/58 Central Board of Revenue All-India Revenue Statistics, the difference between the amount of grossing up benefits and consequential refund due and the actual refund either granted or included by way of amendment is not of a magnitude if one takes into consideration the fact that refund matters are pending for a long period of time and further there is a large number of shareholders who do not apply for refund because of the complicated process. That complicated process of application is even now retained. One can well imagine the difficulty of the small shareholders in this connection. A suggestion has been made for the issue of exemption certificates and a number of copies in respect thereof, but in a matter like this, one would be really begging the question when he would say that an ignorant shareholder has to apply for a number of copies of such certificates. A mention is also made by the majority of the fact that companies may give wide publicity and such publicity should be given by including a suitable information slip to be attached to each dividend warrant. They have opined that additional work involved will not be very appreciable. It appears that the majority have merely made an assumption as to the extra work and labour involved. They have taken no cognizance of the additional expenditure companies would have to incur. Further, the smaller shareholders are put to a definite disadvantage, and the disadvantage although it takes the shape of money value, cannot be ruled out as an issue relating to incidence of taxation when the whole scheme as a composite scheme not involving any change so far as the collective position of the companies and the shareholders is concerned. The Chamber Research Foundation Study and the representation of the Chamber give an analysis of the position and the two appendices to the Research Study and the three appendices to the Chamber representation show the necessary workings in that behalf. The workings will show at a glance that smaller the shareholder, the bigger the additional burden that would fall on him as a result of the so-called simplification. *If the same amount of cash benefit is not given and the amount is the gross amount subject to deduction of tax, the net shortfall in respect of a shareholder having an income exceeding Rs. 70,000 would be only 0.6% whereas it would be 2.8% in the case of a shareholder having an income of Rs. 10,000. This disadvantage would go on increasing as the income of the recipient shareholder would be of a lesser order. On a similar working the loss would be to the extent of 7.4% to shareholders with incomes over Rs. 70,000 and it would be as high as 41.03% for cases of shareholders of income of Rs. 10,000 and less, the percentage being much higher as the amount of total income of the receiving shareholder is less and less. In the light of this analysis, it would appear that the 'luxury' of the 'simplification' would result in depleting company finances and putting the shareholders also in a position of disadvantage and putting the smaller shareholders to much more disadvantage.*

162. The workings were based by Government possibly on the basis of the study made by the Reserve Bank of India of 1001 companies for the year 1956. That study showed an effective distribution of the order of

60% to the shareholders, thereby giving a retention in the hands of Government of a higher order of about 38% and adding thereto an approximate amount of 4.5% by way of commutation of Excess Dividends Tax and Wealth Tax on companies, the resulting figure would be about 42.5% against the rate of 45% taken under the 1959 Finance Act scheme. It was pointed out by the various Chambers of Commerce and Industry and particularly by the Indian Merchants Chamber that the basis of working on the 1956 figures was not correct. Moreover, it should not be assumed that companies would be distributing only 60% because in course of time, to meet changing circumstances, distribution from accumulations would also arise. Industries pass through cycles and in periods of depression and lower profits, companies would certainly have to draw upon their past reserves and accumulated profits. Further, as already pointed out by the analysis made by the various Chambers of Commerce a number of companies would be put to a definite disadvantage and such companies would include banking companies and subsidiaries. The loss of private companies and those falling under Section 23A would be the highest. The result would be that companies will be called upon to shoulder a much higher burden and to draw upon their resources to enable them to maintain the same cash benefit to the shareholders. In other words, the grossing up benefit being denied to shareholders to the extent of 11% as explained and worked out in the Study of the Research Foundation of the Chamber, companies would have to pay from their own resources an amount equal to this net loss to give the shareholders the same amount of cash dividend and it must be noted that the figures which were given by the Reserve Bank of India then related to companies which reflected only 58% of the total assessable income of all companies together, while cases for the remaining companies entailing an income of 42% of the total assessable income have not come into the purview and these companies would be the companies having higher distribution by way of dividends. It was then felt by the companies and the shareholding interests as they represented matters that the distribution would be of a much higher order even for the 1001 companies and it would be nearly of the order of 80%. It is significant to note that as per the analysis made by the Reserve Bank of India for the year 1957, as published in the August 1959 issue of the Reserve Bank of India Bulletin, the percentage of dividend to the total net income, after paying tax, is shown to be of the order of 79.25%. And as stated above, if the cases of the other companies entailing as much as 42% of the total assessable income were taken into consideration the average would possibly work out at 90% i.e. nearly to a full distribution. The working thus made showing the loss to the extent of about 9% in the representation of the Chamber thus stands reasoned out.

163. The fact that companies have felt considerably agitated about the impact of this new scheme may be gauged from the observations made by the Chairman of various companies at their Annual General Meetings. Shri J. R. D. Tata, while addressing the shareholders at the 52nd Annual General Meeting of the Tata Iron & Steel Co. Ltd., stated that:

"The additional cost of the Company of such grossing up during the next three or four years under the provisions of the Finance Act, 1959, will amount to about one crore per year, including the loss of income-tax recovered on dividends on Preference shares which the company used to retain but which will now have to be paid over to Government."

He further warned the shareholders that, unless the provisions of the Finance Act, 1959, were amended, the tax burden would be substantially heavier from the current financial year onwards. While the tax on com-

- panies had been reduced under the new system, the total taxes which the Company and the shareholders would pay between them on profits and dividends respectively in a normal year would be substantially higher than under the existing tax system as relief from income tax would no longer be granted to shareholders on their dividends. Furthermore, under the new system, approximately Rs. 4 crores of tax relief accumulated in reserves built up from past taxed profits would be lost.

164. The majority have pertinently referred to the assurance given by the Finance Minister while replying to the debate in the Lok Sabha on the Finance Bill on 12th March 1959 to the effect that possible inconvenience, difficulties and imbalance that might arise in the operation of the new scheme would be set right if the circumstances warranted it.

165. A full examination has been made of the relevant features of the scheme and its impact. The retention to Government of the tax for the various years in the past does not justify a rate higher than 35% even after including the commutation relief to the Excess Dividend Tax and the Wealth Tax on companies and this is the rate which can be considered as one maintaining the status quo and not creating any hardship whatsoever for companies as well as shareholders, and it is the Taxation Enquiry Commission formula combined with the formula of the Indian Merchants Chamber that can afford a full solution. After all, there is no reason why shareholders and particularly the smaller shareholder should be put in a much worse position. As pointed out, the loss goes on increasing as the total income of the receiving shareholders is less and less.

166. Further the question of the total extinction of the benefit relating to the grossing up in respect of the past reserves and accumulations is also a pertinent one. The reserves of companies can be roughly estimated at about Rs. 500 crores and taking even an average rate of 20% against the existing rate of 31.5%, the grossing up benefit would be of the order of about Rs. 125 crores.

167. Taking all the above factors into consideration, I positively recommend the implementation of the Taxation Enquiry Commission formula as improved upon by the Indian Merchants' Chamber and advocate that:

- in computing the assessable income of every company a deduction ought to be given to the extent of the amount of dividend which the company distributes out of the current profits;
- the grossing up benefit should continue in respect of distributions made out of past profits or accumulated reserves or surpluses which were taxed under the old scheme, or in the alternative a full deduction should be given to the extent of the distribution to be made by companies from such past profits. In fact, it would be better to extinguish for purposes of income-tax by such deduction and relief, all past profits and reserves to enable a clean state of affairs to be achieved within as short a time as is possible.
- There should be no deduction of income-tax from the payments made as dividends to the shareholders and such dividends should be taxed directly in the hands of the recipient shareholders.
- Consequential changes should be made in the legislation to provide for the above matters.

CHAPTER VII

EVASION AND AVOIDANCE

168. At the outset, I should like to make a mention of the fact that in answering Question No. 74 which specifically related to the question of evasion, the Central Board of Revenue have merely stated that apparently the said question was meant to be answered by the members of the public. It would have been much better if their considered reply in this behalf was available.

Responsible opinion, whether in business, profession or vocation, has always been very strong in its criticism of evasion. It is because of evasion by a few in the country that the honest taxpayers have to shoulder an extraordinary burden of taxation. Times out of number responsible chambers of commerce and industry have voiced their feelings in this matter and stated categorically that the evader has no place in the social structure and that there should be a need of developing business ethics as is the case with professions. The honest taxpayer always holds this view and the indifference, if any, that may be exhibited in this behalf would come from the evading class only. The honest taxpayer, whether in business, profession or vocation, has no quarter for the evader and he is very keen in eliminating evasion so that the honest taxpayer gets a square deal.

Tax 'Avoidance'

169. While discussing the question of tax evasion and avoidance, while the majority have ultimately omitted a statement that avoidance has acquired about it a tinge of legality and even of respectability, and though after deliberation they have also rejected the view about defining 'un-ethical' avoidance and putting it on par with evasion and calling it equally anti-social, they have thought fit to refer to President Roosevelt's statement in the concluding portion of this Chapter of the Report where a reference to legal avoidance as unethical has been made. Obviously the approach of the majority is one to think in terms of legal avoidance being unethical. *Such an approach is bound to leave an impression that there is something inherently wrong in avoidance. I should like to stress the issue that the word 'avoidance' even is not a proper word to describe the attempt and a justified one too at the hands of the taxpayer to pay the minimum under the law.* If one makes a proper study of the legislation and tries to so arrange his affairs that, keeping within the law, he tries to pay the minimum, there is absolutely nothing wrong about it. The majority have quoted the observations of President Roosevelt in his message to the Seventy-fifth Congress of the United States wherein he is reported to have stated that there are some instances of avoidance which appear to have the colour of legality; others are on the borderline of legality; others are plainly contrary even to the letter of the law. According to President Roosevelt all were alike in that they were definitely contrary to the spirit of the law and all were alike that they represented a determined effort on the part of those who used them to dodge the payment of taxes which Congress based on ability to pay. He called this attempt one resulting in mulcting the treasury of the Government's just dues.

170. I wish that the majority had reviewed the matter in all its aspects and had taken cognizance of the fact that these observations of President Roosevelt created at the relevant period of time a first-class controversy. Mr. J. P. Morgan is reported to have stated at that time that the "Congress should know how to levy taxes, and if it does n't know how to collect them, then a man is a fool to pay the taxes." In another context he is reported to have stated that taxing is a legal question pure and simple. It was not up to the taxpayers to repair the mistakes of the Congress. He is further reported to have added that he had no sympathy with tax dodging or tax evasion as such and such practices should certainly not be defended but what he felt strongly was that when a taxpayer had complied with all the terms of the law he should not be held up to obloquy for having not paid more than he owed.

171. The controversy brought into the picture Alexander Forbes, President Roosevelt's cousin and classmate at Harvard, and a professor of physiology at Harvard Medical School and his contribution to the Boston Herald put in a very candid manner the attitude of the people at that time. The following pertinent observations were made:—

"If the government were honestly and intelligently using the money levied by taxation to advance civilization in the most effective way and on the highest plane, then it might be argued that the patriotic citizen should gladly pay a generous tax, and even lean toward the government's side in a doubtful case in which the letter of the law does not quite agree with its spirit.

But what can the government offer in support of a claim to such generosity on the part of the taxpayer? Look at the sorry spectacle presented by long rows of beneficiaries of the "boondoggle," leaning on their shovels by the hour, at futile projects; and contrast it with the great universities, museums and research laboratories which have come from the wise and generous giving of such as Morgan, and then consider which is the major constructive force in building a stable civilization.

Nor is the official fostering of idleness all; worse still is the colossal use of patronage to stifle the conscience of the nation and keep the governing party in power. The true patriot when he appreciates that this is how tax money is spent, will claim every exemption the law allows, and he may have betterment of mankind.

172. I should also like to quote the observations of one of the greatest judges of the United States of America:—

"When the law draws a line, a case is on one side of it or the other, and if on the safe side is none the worse legally that a party has availed himself to the full of what the law permits."

[Holmes, in *Bullen v. Wisconsin*, 240 U.S. 625, 630. (1916).]

In another case, *Superior Oil Co. v. Mississippi*, 280 U.S. 390, 395 (1930), Justice Holmes stated as under:—

"The fact that it is desired to evade the law, as it is called, is immaterial, because the very meaning of a line in the law is that you intentionally may go as close to it as you can if

you do not pass it.... It is a matter of proximity and degree as to which minds will differ."

Yet another significant observation has been made by this great judge in his treatise "The Common Law" (P. 148, (1881)) as under:—

"Moral predilections must not be allowed to influence our minds in settling legal distinctions."

There are other pertinent observations in the other court decisions of the United States of America. Judge Learned Hand commented as under in *Commissioner v. Newman*:—

"Everybody does so, rich or poor; and all do right, for nobody owes any public duty to pay more than the law demands; taxes are enforced exactions, not voluntary contributions. To demand more in the name of morals is mere cant."

173. Commenting on the question of tax avoidance and tax evasion, the New Zealand Current Taxation Series (Butterworth Taxation Service) states as under:—

Tax Avoidance and Tax Evasion

"The democratisation of politics has put the balance of power into the hands of the masses who feel little burden from or responsibility for public expenditure, and who use their political power to redress on the political field the balance which they cannot redress on the economic field, and to redistribute wealth by taking it from the better off in the form of graduated taxation, applying it in the provision of amenities for the masses. This gives rise to competitive expenditure bids by politicians as a bribe to the electors when seeking office." Since Professor B.E. Murphy wrote those words in his "Outlines of Economics" there have, of course, been many developments in economic and political thought. Baron Keynes, the depression, the Second World War and the fear of another depression have made us accept high taxation as an unpleasant but necessary part of our way of life. Nevertheless what professor Murphy said is still substantially correct. Only the emphasis has changed. The masses now pay income-tax and the Robin Hood idea of taking from the rich and giving to the poor has merged into the idea of the Welfare State as a kind of "Father Christmas" with magic resources.

Avoidance can take many forms and can vary from what may be called passive avoidance So long as there is no suppression of income or deceiving of the revenue authorities avoidance is usually regarded as perfectly proper. No one is criticised for not smoking or drinking and thereby avoiding tobacco duty or beer duty and no one is usually criticised for avoiding income tax. The Courts have approved, and in some cases appear almost to have commended, the efforts of taxpayers to avoid taxation. See, for instance the judgments in the **AYRSHIRE PULLMAN MOTOR SERVICES** case and in the **DUKE OF WESTMINSTER'S CASE**

There was some criticism in Latilla's case of "elaborate and artificial methods" adopted to avoid tax by exploiting technical loopholes but that is the exception. There was also some newspaper criticism of Noel Coward when he decided to become no longer ordinarily resident in England; a luxury which was costing him thousands of pounds in British taxation. It is significant, however, that a Gallup poll taken at the same time showed that one Englishman in three would like to emigrate. It is human to condemn others for doing what one would like to do oneself.

There is no absolute moral law. In a Utopian society the rule of life might be "From each according to his means; to each according to his needs." In such a society it would undoubtedly be immoral not to work hard but in our society it would be ridiculous to condemn a taxpayer for not working harder and thus making a larger income and paying more tax. The nearest we come to it is to condemn Noel Coward for going into exile.

174. I should also like to give an extract from the "Preface to Potter and Munrows—Tax Planning and Precedence":—

"By the expression 'tax planning' nothing more sinister is meant than that a man should make an intelligent appreciation of the incidence of tax and should take it into account as a relevant factor in planning what dispositions he will make of his property as between himself and the members of his family. Too often prejudice is substituted for reason in the discussion of this topic. There was a time when the onus of justifying taxation rested on the State. All taxation was an evil only to be tolerated on grounds of extreme necessity and subject of certain stringent conditions as to its imposition. Today, when the unhappy notion that the State knows best is the basis of what passes for thought in the political world—by no means confined to those who subscribe to the notion in its extreme forms—it seems to be widely accepted that the onus of proving a claim for exemption from or a reduction of tax rests on the subject. From this premise it is but a short step to the view that any attempt which a man makes to reduce the burden of tax regardless of the character of the method he adopts, is an anti-social act deserving unqualified condemnation.

"It is submitted that if we are to be taxed according to law—if John Hampden's protest is not to have been in vain—the introduction of pseudo-moral judgments into the administration of fiscal measures is to be deprecated. While private property is recognised, we must also recognise a man's right to dispose of his own as he will within the limits allowed by the law. If one lawful course involves the payment of more tax and another less, the choice between them raises no moral issue. What the law permits cannot, in a branch of the law to which equity is a stranger, be reprehensible.

"*Envy, hatred and malice are seldom reliable guides in framing or administering law, least of all fiscal law. Let indignation be reserved for, and indeed lavished upon, those guilty of*

fraud or dishonesty, who seek to cloak the true character of their transactions or who create a fictitious form in order to avoid the liability attaching to the disposition which they have in reality effected".

175. The judiciary in each and every country has upheld the right of the citizen to so arrange his affairs that he pays the minimum.

The observations made in the cases of *Ayrshire Pullman Motor Services* and *D.M. Ritchie v. The Commissioner of Inland Revenue* are also worth noting and these are quoted below:—

"No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest shovel into his stores. The Inland Revenue is not slow—and quite rightly—to take every advantage which is open to it under the taxing statutes for the purpose of depleting the taxpayer's pocket. And the taxpayer is, in like manner, entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Revenue."

The above analysis will show that it is only evasion which should be condemned.

176. I should also like to invite attention to the observations made by the U.K. Royal Commission in its report under paragraphs 1016 and 1018, at pages 304 and 305 of their report. These are reported below for a ready reference:

1016. It is usual to draw a distinction between tax avoidance and tax evasion. The latter denotes all those activities which are responsible for a person not paying the tax that the existing law charges upon his income. Ex hypothesi he is in the wrong, though his wrong doing may range from the making of a deliberately fraudulent return to a mere failure to make his return or to pay his tax at the proper time. By tax avoidance, on the other hand, is understood some act by which a person so arranges his affairs that he is liable to pay less tax than he would have paid but for the arrangement. Thus the situation which he brings about is one in which he is legally in the right, except so far as some special rule may be introduced that puts him in the wrong.

1018. In fact the prevailing doctrine in this country tends in the opposite direction. To quote from a speech made in the House of Lords in a surtax appeal: "Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow tax-payers may be of his ingenuity, he cannot be compelled to pay an increased tax." This principle, well known, must not be understood as going beyond what it says. It does mean that the taxing authorities and the Courts of law, if appealed to, must take the

law and the legal consequences of transactions as they find them and that they have no mandate to impute to a man an income that he does not legally possess merely because he has dispossessed himself of it in order to save tax. But it does not mean, on the other hand, that a man has any right violated or grievance inflicted if the statute law is so amended as to impute to him or to make it possible to impute to him for tax assessment an income larger than his legal one. When these general principles are set against each other neither is seen to be of any assistance in identifying what are the special circumstances that justify such an imputation.

177. *The above analysis will show that the taxpayer does not owe an obligation to pay a rupee more than what is legally justified and any method that he adopts within the law should not be questioned on any ground whatsoever. If any other interpretation were to be made, it would amount to putting a discount on intelligence and to expect that while the State, as it has always done according to past experience can take the maximum out of the subject, the citizen should pay the maximum is not at all corn. If the drafting of the legislation is defective or if the State does not take proper care to translate the intentions into the statutes, it is no fault of the citizen taxpayer. Even Courts in our country have given an indication of the mistakes in the drafting of the statutes.*

178. The question of tax evasion as such has received an added significance as a result of the observations made by Mr. Nicholas Kaldor in his report of Income Tax Reform. He based his analysis on the data available from the census of manufacturers and the National Sample Survey and opined that if the figures in that behalf were anywhere nearer the truth, the amount of tax lost through tax evasion should be more of the order of Rs. 200 to Rs. 300 crores than the sum of Rs. 20 to Rs. 30 crores which was sometimes quoted in that connection. The latter reference relates to the speech of the Minister for Finance for the 1956-57 budget. An analysis of the tax collections from the different income groups would show that the estimate made by Mr. Kaldor is a pure conjecture. Taking the figures for the relevant period, when the report was submitted by Mr. Kaldor, it would appear that there were only 7,850 assesses with a total income of Rs. 99 crores in the higher range of gross income of above Rs. 50,000 so that on the basis of the estimate made by Mr. Kaldor, the evasion would be to the extent of 500% to 600% in those cases. Such a high percentage would naturally be the result of the fact that the average collection of tax showed a percentage of 20 on the average of the income while Mr. Kaldor assumed that evasion was in the topmost levels of income only. With a rate of 50 to 90% applicable to gross income above Rs. 50,000 an absurd result of 60% of evasion in the higher income group would obtain.

179. When Mr. Kaldor gave evidence before the Committee, he observed that he had made a cautious statement in his report and the method adopted in getting the data was open to a large marginal error. But by that he did not mean that the method was biased because there was a difference between a bias and a method and according to him the basis was simply a method of taking an estimate which involved a large marginal error and in so far as there was a bias in that method it was a bias in the other direction, i.e. it was an under-statement and not an overstatement. He then analysed the details of the basic data and ultimately opined that tax evasion in a very broad sense would include all sorts of methods of illegal

evasion as well as legal 'manipulations' which he called tax avoidance normally and by which taxable income was spelled below the 'true income'. The difference of 2:1 which emerged between Rs. 1,150 crores by the National Income method and Rs. 570 crores from the Income-tax Statistics method was excessive and in case it was not excessive, then again it was not excessive to say that having regard to that factor; i.e. this marginal addition to income, that the tax lost was of the order of Rs. 200 to Rs. 300 crores. He ultimately opined that he would be too happy to change his opinion or withdraw if somebody made a study and showed it to him why he was wrong.

I have already given an analysis of the relevant figures above and the Central Board of Revenue have very clearly opined that the amount of evasion would not be more than Rs. 20 to Rs. 30 crores a year. The note prepared by the Board is given in a separate Appendix attached to this memorandum. *Having examined the basic data I would say that the estimate made by the Central Board of Revenue may be more near the mark than the figure surmised by Mr. Kaldor.*

In this connection I may mention that the extent of evasion in the United Kingdom as estimated is also of a very high order. Official witnesses made an estimate of a figure as high as £300,000,000 to £500,000,000 while giving evidence before the Royal Commission in 1919. This sum represents a very considerable amount indeed. If that amount were collected, the honest taxpayer might hope for relief from some of his burdens.

Causes leading to Evasion.

180. There are various factors which give rise to evasion and one important factor is the question of the high incidence of taxation. The majority have opined that while they cannot deny that higher the rate of tax the greater would be the temptation for evasion and avoidance, they feel that the tax rates by themselves cannot be blamed for the large extent of evasion in the country. *While one should never think in terms of justifying evasion because of the high incidence of taxation, the fact also cannot be ignored that evasion is the result of high rates and incidence of taxation.* Our present rates flow from the desire to raise the maximum revenue and a position has developed whereby the taxable capacity has been overreached. Evasion leads to higher statutory rates and because of the higher rates there is evasion. Then there is a desire to increase further the rates or the burden of taxation and out of this vicious circle the States with prevailing high rates can never think of coming out. The predominance of revenue bias in the provisions of all the Direct Tax Acts as opposed to canons of justice, equity and good conscience contributes to a great extent to evasion and malpractices. *The real remedy would be to simplify the tax structure and particularly the definitions of 'income' and 'allowables' and the redressing of the position with regard to a composite head of income and a composite allowance of expenses according to canons of justice, equity and good conscience, and then to think in terms of imposing the minimum possible strain on the economic fabric of the country and thereafter adopt a lower tax rate structure which alone in course of time is bound to give much bigger dividends.*

Survey Work

181. Amongst the remedies to tackle evasion the majority have referred to the question of survey and its usefulness. The actual working of the Survey Branch requires to be looked into more critically. While finding

out the number of additional assesseees to be taken on record it is also necessary to find out as to in how many cases unnecessary enquiries were made of the existing assesseees. The tabulated statement (included in the appendices to this Memorandum) regarding the progress of survey work shows that the number of shops surveyed for 1958-59 was 4,33,509 and out of these only 88,298 new assesseees were discovered. From this, the number of effective cases was only 67,733. Thus the enquiry in respect of existing assesseees completely outnumbered the number of new assesseees and nearly 20,000 enquiries out of 88,000 were ineffective. The unnecessary harassment and inconvenience caused to the existing assesseees and those who were not ultimately proved as liable can be gauged from these figures. I would therefore strongly urge that the Inspectorate class which make this external survey should make enquiries in respect of new assesseees and a mention by a particular shopkeeper or person about his being already assessed should be checked up with the departmental records and only in case the matter is not traced in the assessment record, the enquiry should be pursued further. Such Inspectorate class should derive only a sort of administrative sanction from the Income-tax Officers and they should go with a written authority to make informal inquiries. In view of the abuse of the position which can be made by this sort of outdoor survey work it is but essential that this class should not have any statutory powers or sanctions. These matters have been discussed a number of times, even as early as the time when the 1932 Amendment Bill was discussed and strong views have been expressed in that behalf in the legislatures.

Group Assistant Commissioners' Charges

182. The majority have included the recommendation in this behalf under the Chapter Tax Evasion and have opined that apart from other advantages this system helps in checking evasion. It is a question whether the Group Assistant Commissioners would be dealing with cases of evasion. They are certainly dealing with cases involving large revenue or involving important issues but to say that they are dealing or should be expected to deal with cases of tax evasion would not be correct and would not reflect a correct approach. Even assuming that the idea is to think in terms of a proper enquiry at the hands of superior officers in important cases, it would be too much to say that tax evasion would be checked by the creation of Group Assistant Commissioners' charges. Really speaking, these charges are charges which would be the training ground for officers who work under the Group Assistant Commissioners and such officers in course of time would be able to assume higher responsibilities. The other advantage of a group system would be that the group leader, i.e. the Assistant Commissioner, would be readily available for a hearing to the assessee and/or his representative. A first-hand discussion would be possible and therefore in respect of the group charges wherever they are created, the system should be that a number of officers work under the group leader Assistant Commissioner and the assessments are actually made by the group leader after hearing the assessee. Appeals in such cases should go to the Income-tax Appellate Tribunal. The Income-tax Investigation Commission have favoured this idea. The other advantage of doing this would be that by bifurcating the administrative divisions into two wings, one relating to the group charges and the other relating to the non-group charges, the constant complaint of the tax paying public would be sufficiently met. The other cases can then be looked into by administrative Assistant Commissioners who need not perform the present functions of Inspecting Assistant Commissioners. These Inspecting Assistant Commissioners, according to the representations made by the tax paying public interfere with the work of the assessing income-tax officers. The independence of judgment of the

assessing officers should not be crippled in any way because these are the officers who are the backbone of the Department and these are the people who in course of time would assume higher responsibilities. If they have administrative difficulties or certain clarifications to seek, it would be for them to take the initiative and ask for a clarification but the final judgment should be of the assessing officers. *By having the institution of Inspecting Assistant Commissioners as such, the interference and domination by such Inspecting Assistant Commissioners cannot be avoided however much it might be desired to do so.* Therefore, it is in the fitness of things that the administrative clarifications and guidance are left to a smaller number of administrative assistant commissioners or even to the commissioners by abolishing the number of assistant commissioners and creating a smaller number of deputy commissioners' charges.

183. *In making this suggestion I have in mind a distinctly separate set-up for the inspection wing which should function and function vigorously under the Directorate of Inspection.* The Officers working under that wing may be stationed at important headquarters like Bombay, Calcutta, Delhi, Madras and Nagpur and other such centres as may be found necessary. For smaller places, inspecting officers working under the Directorate of Inspection may pay visits or may have planned tours. *Such a process would divorce the administrative part from the inspection part and such a split-up would be both in the interests of revenue and the taxpayer.* So far as the taxpayer is concerned, he would get an administrative set up whereby the independence and the judgment of the assessing officers is not in the least undermined and so far as the department is concerned, the inspection wing would work with full strength and vigour and at the same time the administrative control would stand regulated through the deputy commissioners or a smaller number of administrative assistant commissioners as indicated by me. I would have discussed this matter under the Administration chapter but because it has been covered under the Tax Evasion chapter, I have thought fit to offer my comments under this item here. I shall give my additional comments while discussing the Administrative set-up.

Total Wealth Statements.

184. The majority have recommended that net wealth statements may be called for in the prescribed form once in 4 years in respect of all cases, i.e. in respect of cases even if they are not covered by the wealth-tax assessments. It is significant to note that the Central Board of Revenue while replying to the relevant question viz., Question No. 28, gave the following answer:—

“The existing law provides for the calling of Statement of Wealth and this can be invoked in suitable cases. Where the accounts produced are incomplete or unreliable or where concealment of sources of income is suspected, statements of wealth are, as a matter of practice obtained from the taxpayers concerned. The statements are obtained and compiled every three or four years in such cases.

2. It may not be necessary to make obligatory for the assessee to furnish voluntarily separate statements of wealth for income-tax purposes.”

185. I have gone through the draft form which is suggested for such cases including the cases for the so-called small income group assessments. The contents also embrace expenditure items as I have already commented

upon the same earlier. *It is a question whether all this enquiry in each and every cases is called for. It is bound to result in extra load of work for the Department without a commensurate advantage and it is likely to result in undue harassment to a large number of middle income group or the smaller income group of taxpayers.* The assessing officers with such a provision would make searching enquiries and try to reconcile the opening and closing wealth to a degree of accuracy. The process would actually result in all the formalities of the wealth-tax although once in 4 years to be introduced in respect of each and every case. The Department has of course the right as pointed out by the Central Board of Revenue itself of making enquiries in fit cases and with that position I am unable to agree with the recommendation of the majority and I recommend that a provision for calling of wealth statements once in 4 years should not be made.

Summoning information from Banks

186. The Committee discussed this matter threadbare and ultimately came to the conclusion that a provision to cast a statutory obligation on banks and shroffs to furnish information regarding persons making deposits above a specified amount should not be made. The majority have, however, made a recommendation in the following terms:—

“We feel that a change could be made in one direction viz., that banks and other credit institutions should be required to give the names and addresses of their constituents the sum total of whose deposits or withdrawals on any date exceed Rs. 1 lakhs. We are, however, not in a position to assess the volume of work that would be involved in the furnishing of such information and we therefore leave it to Government to arrive at a final decision after consulting the Reserve Bank of India”.

I had expressed my view before the Committee that such a requirement would go even beyond the requirements contemplated by the suggestion which the Committee had turned down. I had given an indication of the work involved with regard to this matter and stated that it would be colossal. I had also opined that such a requirement would entail the maintenance of independent collating records to find out the aggregate deposits as well as withdrawals under the various heads by each particular customer of every bank. Taking into consideration the question of splitting up and the fact that such a provision would give rise to more of cash transactions and prove detrimental to the growth of banking, I had suggested that such an impracticable suggestion should not be made. As this is one of the vital questions put in the questionnaire and the majority have expressed a particular view, I consider it proper to say that no such provision should be made.

187. The majority have further recommended that Banks should be required to communicate to the tax authorities through an annual statement brief particulars of shares held by them in blank transfers. *With respect, I may state that they have not taken into consideration the amount of work involved. Preparation of such a statement would entail colossal work and would amount to writing up duplicate registers. Any one having a practical experience of the functioning of banks would be able to gauge the voluminous work involved. Moreover, the tendency of putting all the burden even for the work of Department on assesseees is not healthy and there should be a clear distinction between inquiry*

** Vide para 2 of letter dated 30th November, 1959 from the Chairman of the Committee printed at the beginning of this Report.

in particular cases and roving inspection. A requirement of the nature recommended by the majority would be detrimental to Banking and in the light of the observations made hereunder and those in the preceding paragraph I dissent from the majority's view and recommend that their suggestion be not accepted.

Raiding of Premises

188. The majority have recommended that the power at present enjoyed by the officers to be exercised only with the previous approval of the Commissioner may be granted to Assistant Commissioners as well. In this connection I would like to state that such a power should be restricted only to those Assistant Commissioners who are actually functioning as assessing Assistant Commissioners and not to others. Moreover, the recommendations made hereunder and also in the other parts of the report should not deteriorate into mass raids. Visits to the assessee's premises should be paid rarely and after the personal satisfaction of the Commissioner that reasonable grounds exist for suspicion of evasion of substantial amounts of tax or a systematic and widespread attempt at evasion. No harassment should be caused to the assessee and every care should be taken to see that no damage is done to the assessee's reputation without the charge of evasion ultimately being established against him being so sustained.

Exchange of information between Government Departments and Evasion of Sales Tax

189. While dealing with these subjects, a mention is made of the fact that there is a suppression of sales to save sales tax. In such cases the saving by way of sales tax would be much more than that for Income-tax. This would obviously indicate the high incidence of sales Taxation. The result is more of cash transactions and revenue loss to the State both in the Centre and in the State in the shape of income taxation and Sales taxation. This aspect has been noted by the Committee and it is equally important so far as evasion of income-tax is concerned. A natural finding must flow from the above approach that excessive rates of income-tax and super-tax must result in an increase in the number of cash transactions with all its implications and disadvantages to the country as a whole and to the detriment of the country's economy.

Automatic Reporting System

190. I am glad to note that the Committee have found themselves unable to accept the suggestion of Mr. Kaldor for having an automatic reporting system. A more detailed consideration of this matter requires to be made. Mr. Kaldor expressed the view that the existing evasion of income-tax, super-tax and estate duty as well as the administrative difficulties in connection with the taxation of capital gains, the annual tax on wealth and personal expenditure tax should be overcome through the institution of an automatic reporting system of all capital transactions, etc., with the aid of a simple system of code principles. He had further suggested that it should be obligatory in the case of all property transfers registerable under the Transfer of Properties Act to disclose the code numbers of the transferee and the transferor. It should also be obligatory to produce a declaration to disclose the code numbers of beneficial ownership and there should be a comprehensive return embracing all particulars relating to capital gains, wealth, expenditure

and gifts. Further, in case of all payments of, say above Rs. 10,000 which are not payments for goods or services, the completion of a receipt in the form of a voucher and its surrender by a payer should, according to Mr. Kaldor, be made a statutory requirement. He relied on the Swedish precedent but little cognizance did he take of the fact that India is a sub-continent and the system of the nature suggested by him would not only be cumbersome but impossible of implementation. One can well visualize the theoretical approach to this matter when Mr. Kaldor in another context suggested that for benami transactions the benami holder should be asked to disclose the name of the beneficial owner. In case where there is a legal benami holding, there is no difficulty in asking the beneficial owner but it is in respect of a de facto holding in the name of another person of property belonging to another that the issue arises to be considered and it is a question whether the objective would stand at all achieved for cases like these. If Mr. Kaldor's suggestions were to be accepted and recommended for implementation, the work would create cartloads of papers and a situation of utter confusion in respect of cross-verification would arise. It is for these reasons that the suggestions for an automatic and a comprehensive reporting system should stand rejected.

Benami Transactions

191. With regard to the recommendation made hereunder, I may observe that the intention is to create evidence against a real owner in favour of a de facto owner if the former for purposes of income-taxation and wealth-taxation excludes the income and wealth from the respective returns of his so that the other party could claim advantage by calling for the relevant evidence and establish his right to the ownership. But care should be taken to see that a mere accounting of income or a mere inclusion of a particular item of wealth in a particular person's assessment by itself should not establish an ownership right and when the question of ownership is decided it should be for a court of law after hearing the respective parties, i.e., both the de facto owner and the real owner, claiming ownership thereof, that finality should obtain.

Blank Transfers

192. The question of regulating blank transfers in the recognised stock exchanges and outside should be dealt with separately. For the former new legislation relating to the regulation of recognised Stock Exchanges should be examined to see how far the regulation can be had under the respective law and regulations and bye-laws made thereunder. For the latter category, the majority have recommended that the restrictions relating to the period of ownership of blank transfers need not be applied in the following cases:—

- (a) Where the shares are handed over to a banking company either as a security or for safe custody;
- (b) When shares are held in blank transfers by Directors of Companies or Partners of Registered Firms or Trustees in a fiduciary capacity.

I recommend that an additional category be mentioned as category (c) as under:—

- (c) Shares held in blank transfers in any fiduciary capacity or in the alternative, this comprehensive heading should be substituted for heading (b).

Informers

193. The majority have recommended that the present practice should continue and in doing so they have given quotations from the report of the Taxation Enquiry Commission only in part. It is essential to give the full extracts which I am reproducing below:—

“The Income-tax Investigation Commission which also considered the question, pointed out that provisions for such rewards exist in the income-tax systems of certain other countries, and also in the Indian Customs administration. On the other hand, it found that the consensus of public opinion was against the proposal, mainly on the ground that it might induce would be informers to resort to the practice of blackmailing taxpayers and extorting monetary consideration for refraining from giving information to the Income-tax Department”.

“The informer can, therefore, come up after the event, with evidence some of which he may have concocted, and he has ample opportunities of adding to, and modifying, his version from time to time. This puts him in a position to approach the assessee also from time to time with a view to blackmailing him”.

“This makes it all the more necessary, in our opinion, that the income-tax Department should exercise the utmost caution in its dealings with the informers. Moreover, the reward that Government can give is not likely to be large and it is possible for the former, where the evasion involved is considerable, to extract a much higher amount from the assessee as the price of his silence. This is another serious aspect of this matter, which we trust will be borne in mind when the question of the continuance or modification of the existing system of rewards to the informers is taken up for consideration in the light of the above remarks and the further experience of its working”.

194. The Central Board of Revenue, in reply to the additional questionnaire, Question No. 43 have given the following information with regard to informers whose identity is known and about anonymous informers. This information is reproduced below:—

Information regarding payments of rewards to Informers during 1958-59

A. Informers whose identity is Known :

(i) Number of Informers :

(a) Whose information was found useful	66
(b) whose information was not found useful	237
Total number	303
	Rs.

(ii) Additional revenue raised as a result of information received (in thousands) 2,911

(iii) Collections out of (ii) (in thousands) 2,118

(iv) Rewards given :	
(a) Number of informers	5
(b) Amount of rewards	14,390
B. Anonymous Informers : (Anonymous petitions, etc.)	
(i) Number of Informers :	
(a) whose information was found useful	1,197
(b) whose information was not found useful	1,878
Total number	3,075
(ii) Additional revenue raised as a result of information received (in thousands)	2,880
(iii) Collections out of (ii)	1,874

195. It will appear from the figures given that in respect of informers whose identity was known, the total number was 303 out of which information from only 66 informers proved to be useful. It is stated that the additional revenue was of the order of Rs. 29 lacs and collection there against was Rs. 21 lacs but it would not be as if in all these cases it was only the informant who supplied the clue to the Department and the Department had nothing whatsoever to fall back upon. The majority have significantly recommended that a statutory provision should be made for punishment of informers who give wrong information. Consequently, therefore, a recommendation should have been made for discounting completely anonymous petitions and information from anonymous informers. In respect of these cases also it is a question whether in all the cases it was only this outside information which was the basis for a further enquiry, the Department not having anything with them to initiate proceedings. In any event, the class of informers is a pure black-mailer class and interests of fairplay require their total discouragement.

Penalties and Prosecution

196. The majority have opined that the existing provisions are not appropriate and that appellate authorities have in a vast majority of cases either cancelled the penalties or reduced them to nominal sums. I am not inclined to agree with the view that the provisions in this respect are not appropriate. For imposition of penalties, the assessee must be judged by the appellate authorities and the matters should not be viewed in a rigid manner for imposition of penalties under a straight-jacket scheme. Each case must be viewed on merit and it is the circumstances of each particular case which should decide the matter. The cancellation and substantial reductions reflect on the work of the assessing officers.

The majority have recommended the system of automatic imposition of penalty. The Income-tax Investigation Commission which considered the matter in sufficient detail gave the following finding:—

"218. We have received numerous complaints that the power to impose penalty is exercised by the Income-tax Officer in a somewhat arbitrary manner even though attempt has been

made to secure uniformity by obtaining the statutory previous approval of the Inspecting Assistant Commissioner and the administrative approval of the Commissioner. We therefore framed Question No. 41 in order to ascertain whether some other scheme might not be thought of which, in the event of failure to submit returns, would operate automatically. We asked whether it could not be provided in the Act that persons who had not submitted their returns should be disentitled from claiming statutory deductions of certain kinds. The general trend of opinion was against the suggestion, and we are, on the whole, inclined to agree with this view. In making the suggestion we had in mind the practice in England where failure to submit a return automatically entails the forfeiture of allowances, which can be obtained only after a proper claim is made for them in the return. Under the Indian system, the necessity of granting some of the allowances is met by exempting from taxation income upto a prescribed limit. Whenever an assessment is made under section 23(4) the Income-tax Officer is bound to grant this exemption. The forfeiture of the other allowances may not involve sufficient penalty. Moreover, the application of an automatic provision of the kind suggested would fail to take into account the difference between a variety of conceivable cases ranging from downright fraud to technical default in the submission of a return within the prescribed time. A mechanical rule of the kind suggested would attract the penalty without each case being judged on its own merits. We, therefore, agree that the substitution of an automatic penalty would not operate equitably and that the discretion of the Income-tax authorities to regulate the quantum of penalty should be retained. The prior statutory "approval of the Inspecting Assistant Commissioner and the administrative sanction of the Commissioner would no doubt be useful in securing uniformity and correcting any arbitrariness in the imposition of the penalty; but as we pointed out in paragraph 299 *infra* the Inspecting Assistant Commissioner's sanction should in all fairness be given only after allowing the assessee an opportunity to show cause against it."

197. A reference is made by the Income-tax Investigation Commission in their report about the practice in England where failure to submit a return automatically entails the forfeiture of allowances, which can be obtained only after a proper claim is made for them in the return. One has to be cautious in judging the provisions of the other countries where conditions are totally different, for example, in the United States of America, the whole system of assessment is based on what is known as a self-assessment basis, where the returns are normally not inquired into and there is a sort of test check applied. Naturally, therefore, with the background of the relevant enquiry in each case being absent, the penal provisions as also the provisions relating to prosecution should take a different shape. The position in the United Kingdom is, however, one which determines the assessment on an enquiry and ultimately finalises the matter after an attempt is made for an agreed assessment. There also the position with regard to penalties is in a confused state. The

U.K. Royal Commission have made pertinent observations in their report and I am reproducing certain relevant extracts below:—

- (1) Action should be taken in due course to promote legislation for the purpose of removing confusion and overlapping from the penalty provisions and bringing them up to date. An expert Committee drawn from lawyers and members of the Inland Revenue Department should be entrusted with the work of review and of preparing the recommendations. Although the existing system may work well enough in practice, it is not right that penal provisions, which are capable of involving very grave consequences, should remain ambiguous.
- (2) We do not find anything amiss in the present system of distributing the power of imposing penalties among various authorities. To say that no penalties should be recoverable except through the agency of a Court of law does not appear to us to be a precaution that is desirable in the interests of the subject. There are several offences which may not be of great culpability and as to which the facts cannot be in dispute, such for instance as a neglect to make a true and correct return or a refusal to deliver a return: as to these, if they are to be penalised, it seems to be in everyone's interest that it should be possible for any penalty imposed or to be imposed by one of the ordinary tribunals that deal with income-tax appeals. Again, some offences are disclosed by the facts that are gone into in the course of a tax appeal before General or Special Commissioners. Advantage lies in authorising the tribunal which has investigated the facts to decide upon and to impose the appropriate penalty if so requested by the Revenue, instead of requiring the Revenue to start a new set of proceedings in the High Court in which the facts would have to be gone into all over again.
- (3) We accept from the foregoing the special position of the Treasury. At present it has the same power as the Board to mitigate fines and penalties. We do not think that there is any place for two sets of concurrent powers which, if exercised, could only lead to confusion and we think it clear that the powers of the Treasury in this field should be withdrawn.
- (4) There ought to be a clear line of distinction between offences that depend upon the presence of fraud (in which we include all false statements knowingly made and intended to be acted upon) and other offences. If fraud is relied upon as the ground for seeking the imposition of a punishment, whether fine or imprisonment, proceedings should be taken before the High Court or upon indictment.
- (5) The distinction between penalties and penal duties should be done away with. It should be made plain that penal duty is nothing but a penalty and is neither a liability that arises by process of assessment nor a form of liquidated damages. Moreover, there should be a rationalisation of the amounts involved, whether in penalties or penal duties, for at present the relationship is haphazard. *For instance, it is obvious that there may be cases in which a liability for treble the amount of tax properly due is altogether excessive in relation to the offence committed.*

- (6) Assuming that our recommendations for removing assessing functions from the Special and General Commissioners are adopted, they should not be left in possession of any powers of imposing penalties which came to them as appended to those functions. Their functions should be to hear and determine proceedings for penalties (other than fraud) initiated by the Board.

198. Taking into consideration the above analysis, I am of the view that the imposition of penalty should not be automatic but the maximum amounts leviable in respect of different types of default should be laid down. There should be a distinction between mere omission through oversight, omission due to negligence, omission due to deliberate concealment and wilful default and concealment in cases where fraud on revenue is involved. While the late submission of returns or their submission by the end of the relevant year should not attract any penalty, a delay beyond the financial year but up to the next financial year should attract penal interest only and, that too, on the amount of tax that would be ultimately charged up to the date of the submission of the return on the tax finally determined less payments made under Section 18A, those made under section 23B and all other credits or refunds to which the assessee may be entitled to. In the United Kingdom there is no penalty as such for the late submission of returns or even for the payment of taxes and only 3% interest is payable. It is only in cases of deliberate refusal and deliberate and undue delay and the submission of incorrect or untrue return that a penal imposition can take place.

199. The majority have opined that there are provisions in other countries including the United Kingdom where this onus of proving that the omission is not on account of wilful neglect is thrown on the assessee. With respect I should like to point out that the position has been misread. The majority's recommendations is in the following terms:—

“We appreciate the difficulties faced by the Department in discharging the burden of proof for levying penalties. We recommend that the penalty provisions of the direct taxes acts should be brought in line with Section 49(1) of the Income-tax Act, 1952 of the United Kingdom”.

This section is reproduced below:—

“49. (1) If the Additional Commissioners or the General Commissioners—

- (a) have made a charge to tax under Schedule D in respect of a sum in excess of the amount contained in either the statement or the schedule of a person to be charged; or
- (b) discover, from the information of the surveyor, or otherwise, that a charge to tax in respect of a sum in excess of either such amount ought to be made, and an assessment is made, at any time within the year of assessment or within three years after the expiration thereof,

they may, unless the person to be charged proves to their satisfaction that the omission by him did not proceed from any fraud, covin, art or contrivance or any gross or wilful neglect, charge that person, in respect of such excess, in a sum not exceeding treble the amount of the tax on the amount of the excess”.

200. My reading of this provision is that the onus of proving that a particular item of income is includible or not in the assessment being the assessee's income is on the Department and it is for the department to show that the assessee concealed that income. According to the section as it reads it is not as if the burden shifts to the assessee. It is only when the operation of treble the tax comes in that the assessee, to avoid treble tax being imposed, would have to show that the omission did not proceed from any fraud, covin, art, or contrivance or any gross or wilful neglect. Various official witnesses also stated that it would be wrong to call upon the assessee to prove the negative.

201. *In the light of these observations I am of the view that there is no need to make any such provision because in a case where the Department thinks that there has been a fraudulent concealment of income, it would impose the maximum penalty of 1½ times the concealed income and ipso facto the assessee in appeal would have to state his case about the factor of fraudulent concealment not being there to enable him to get a reduction of the maximum penalty if so imposed.* ** Incidentally, I may mention that treble the tax mentioned under this section 49 of the U.K. Income-tax Act, 1952, has been misunderstood as treble the penalty and accordingly even the questionnaire included a suggestion about the imposition of treble the penalty. The Central Board of Revenue advocated the imposition of treble the penalty possibly on this very interpretation and even the Taxation Enquiry Commission have proceeded while considering the relevant issues on the basis that it is treble the penalty and not treble the tax.

Prosecutions

202. The majority have made the following pertinent observation in their finding in this behalf:

"That during the last ten years the department had not been able to get even a single person convicted in a court of law for an offence against the Income Tax Act. Though preliminary proceedings had been initiated in a small number of cases they were dropped ultimately, either because the case had been compounded or the evidence was not found strong enough to secure conviction".

I do hope that the approach does not embrace a trend of thought that there must be some prosecutions which must be launched every year whatever the possibility of success for the Department.

While I am of the view that in cases where fraudulent concealments are unearthed and there is evidence to support the case, the Department ought to sanction and proceed with the prosecutions, the practical aspect also should not be lost sight of.

203. It would be useful to consider the position obtaining in other countries and the practical consideration given by them. According to the information contained in the One Hundredth Report of the Commissioners of Her Majesty's Inland Revenue for the year ended 31st March 1957, the

**Vide para. 2 of letter dated 30th November 1959, from the Chairman of the Committee printed at the beginning of this Report.

position with regard to imposition of penalties and criminal proceedings is as under:—

Year ended 31st March						No. of cases.	Total charge raised	Penalties included in total charge*
							£	£
1939	.	.	.	.	.	2,774	3,131,410	Not available
1948	.	.	.	.	.	1,411	4,190,479	967,279
1949	.	.	.	.	.	1,802	4,432,384	1,059,856
1950	.	.	.	.	.	1,886	5,054,070	1,291,092
1951	.	.	.	.	.	2,838	7,469,568	1,735,049
1952	.	.	.	.	.	4,962	9,430,396	2,446,205
1953	.	.	.	.	.	9,836	11,045,412	3,865,219
1954	.	.	.	.	.	18,144	20,381,870	7,555,342
1955	.	.	.	.	.	19,663	20,587,922	8,420,419
1956	.	.	.	.	.	16,116	22,661,950	8,490,973
1957	.	.	.	.	.	15,511	22,549,246	9,426,295

*The figures for penalties include income tax and surtax underpaid for years outside the normal time limits for assessment, unless such tax has been assessed under the special provisions which apply where fraud or wilful default has been committed.

124. In addition to the above, District Inspectors settled the small cases shown in the following table. The figures reflect the impact of the Finance Act 1951. That Act gave the Board power to obtain from banks and other persons carrying on a trade or business who pay or credit interest without deduction of income tax, the names and addresses of the persons to whom such interests is paid or credited and the amount so paid or credited in any case where it exceeded £15 per annum. The bulk of the cases in which under-assessment of interest was discovered, following that Act, have now been settled.

Year ended 31st March						No. of cases.	Total charge raised.
1951	.	.	.	.	.	1,654	165,344
1952	.	.	.	.	.	5,218	420,650
1953	.	.	.	.	.	136,188	5,389,215
1954	.	.	.	.	.	133,757	4,927,412
1955	.	.	.	.	.	75,580	2,358,746
1956	.	.	.	.	.	35,183	1,018,282
1957	.	.	.	.	.	37,578	940,002

CRIMINAL PROCEEDINGS

125. The following table summarizes the prosecutions by the Board in 1956-57:

Class of case	Nature of offence.	No. of persons.	
		Prosecuted	Convicted
Tax frauds	False accounts and returns ; Omitted sales and fictitious purchases ; fictitious betting accounts, etc.	15*	14
False claims	False claims for allowances for wife, children, dependent relatives, travelling expenses etc. false repayment claims.	31	31
P.A.Y.E. frauds	(1) Employers ; false annual returns and tax deduction cards	5	5
	(2) Employees ; forged alterations to employer's leaving certificate of pay and tax deducted ; impersonation of another taxpayer to obtain increased allowances.	3	3
Post-war credit frauds	False claims for post-war credits	1	1
Thefts	Thefts and fraudulent encashment of payable orders	3	2
Miscellaneous	Assault on Collector.	1	1
		59	57

* A nolle prosequi on grounds of ill-health was entered in the case of one accused person.

204. The above analysis will show that while the number of cases of under-assessments ultimately settled which was—18144 in 1954, 19663 in 1955, 16116 in 1956, 15511 in 1957 the number of prosecutions was meagre e.g. 59 in the year 1957, convictions being obtained in 57 cases out of 59. *This clearly indicates the position that it is very very rarely that the prosecutions are launched. The number of individuals with total income above the exemption limits for 1956-57 was over two crores and it is against this total number of individuals that the number of prosecutions has to be gauged.*

205. I may pertinently refer to the observations made by Mr. Ronald Staples in his treatise "Staples on Back Duty":—

"The detection of evasion can be expected only from an administration which is free from the toils of an "ill-digested mass of legislation, and which is sufficiently and efficiently staffed and equipped to carry on the work. While the Inspector of Taxes in the district is expected to keep in touch with the constant changes in the law and practice, and to pit his brains against well-informed professional opinion, he cannot be expected to be in a position to devote much time to the detection of evasion. The authors' experience is that the officials commence investigations in more cases than they are able to complete within a reasonable time; the consequence being that the taxpayer—honest or dishonest—is on the rack unnecessarily for

months and even years. Owing to shortage of staff in the Inland Revenue Department this is particularly true today, although a real attempt to improve the position is certainly being made by the Board of Inland Revenue."

Another eminent author Mr. A. J. Roper in his book "Back Duty Manual" observes as under:—

"Most cases are settled on a pecuniary basis and in only the most serious is the Revenue likely to take the matter to courts."

206. The other relevant observations of the author are also of considerable importance:—

"The next class to be considered is that where there has been deliberate evasion or fraud. This class covers, in varying degrees of seriousness, most of the Back Duty cases which arise in connection with businesses. They range from the case of the retail trader who omits some part of his cash takings from his accounts to the case of the businessman who deliberately uses false invoices or other devices to deceive his accountants and thereby the Revenue Department. The essence of negotiating a settlement in cases of this type is an appreciation of the evidence of evasion and fraud known to the Revenue Department, together with an appreciation of the possibility of proceedings being taken by the Department. *If at this stage, the case is still working in the Inspector's office, the possibility of criminal proceedings can be almost completely ruled out.* As regards penalty proceedings, the Department does very occasionally commence proceedings by the issue of writs, but this is only done where there is a refusal to make an offer or where the offer is grossly inadequate. Bearing in mind the lack of positive evidence of evasion or fraud and the reluctance of the Department to take public proceedings, skilful negotiation will frequently effect a settlement very much smaller than would at first sight seem possible".

207. So far as the United States of America is concerned, the following information emanates from the Statistics on Tax Fraud Cases (Bureau of Internal Revenue 1945—49 inclusive):—

14,183 cases were investigated by the Special Agency in charge out of which 9,381 cases were sent back to revenue agents in charge and collectors for settlement without further consideration of prosecution. The remaining 4,802 cases were referred to Chief Counsel (Now by Regional Council, Penal division for Prosecution). Prosecution was rejected by Chief Counsel in 1,115 cases; 2,684 cases were referred to the Department of Justice for prosecutions of which 2,242 related to 3 years, viz., fiscal years 1947, 1948 and 1949 out of the five years 1945 to 1949 stipulated above. After a final filtration it was only in 348 cases that sentences for which time was to be served were sustained. *It is significant to observe that the number of prosecutions for 3 years so resulting in jail for the evader was only 348 giving an average of 116 prosecutions so sustained against a total number of taxpayers exceeding 7 crores.* It is also necessary to repeat the observation that the assessment system in the United States is one based on self-assessment. Moreover, in U.S.A. criminals are dealt with under the tax law as it is difficult to have convictions under the criminal law. *It is for this very reason that it is essential in such a system to function properly that the tax administration should protect the taxpayer not only against over-assessment but against frivolous prosecution. Further, the prestige of the State cannot be put at stake and*

unless and until the State has full evidence to sustain a prosecution charge, the other and a better remedy of imposing and collecting a deterrent penalty should be adopted. Analysing the statistics further the position for the United States of America is that while for the fiscal year 1949 the Department of Justice took only 350 criminal tax fraud cases into the court, against which a correspondingly reduced number of final convictions by jail sentence was sustained, Government collected 38 Billion Dollars in tax revenues that year. This collection was really effective work.

208. In this connection I would also like to quote the answer given by Shri S. Varadachari, Ex-Chairman of the Income-tax Investigation Commission. His opinion was sought as to making an offence under Sections 51 and 52 as penal with imprisonment and making the quantum three times instead of one and half times. Shri Varadachari gave the following reply:—

"My answer is this. Generally, nearly in all Western countries they have fairly a well-developed system of income-tax. They are averse to take recourse to criminal law for income-tax cases. The revenue matters should be dealt with on the revenue side and not converted into crimes. Even now you have power to impose penalties, sometimes, it is exercised severely."

I am therefore of the view that while the threat of jail may be there, the State should not think in terms of jail as a deterrent.

209. The same observations would apply so far as I am concerned to the suggestion of the majority that resort should be had more frequently to the provisions of the Indian Penal Code rather than the provisions of the taxing statutes. *Here also it is the basis of evidence and the possibility of success that should determine that issue.*

210. There is one more recommendation by the majority that deliberate concealments of income, wealth, etc., should be made a specific offence punishable under Section 52 of the Income-tax Act and the corresponding provisions of the other Direct Tax Acts. In this connection also I should like to reiterate what I have stated with regard to the question of prosecutions. *It is only in cases of fraud, perjury or such other offences that prosecutions may be launched and not in cases where there is a concealment of income; for the latter types of cases, the preferable remedy is the imposition of money penalty and it is only fraud, false statement etc., in respect of which prosecutions should be launched.*

211. There is yet another finding by the majority in respect of which I should like to offer my comments. This finding reads as under:—

"Our attention was drawn to the provisions of Section 5(2) of the Prevention of Corruption Act, 1947 (2 of 1947) and it was suggested that a maximum sentence of seven years as provided in that Section should also be adopted..... We do not consider that enhancing the maximum period of sentence will itself serve any useful purpose at the present moment when practically no prosecutions have been launched for the past several years. We do not consider that it is necessary at this stage to introduce such a provision but if in actual practice hereafter the Department finds that the courts are averse to awarding imprisonment, the question of amending the existing provisions so as to provide for a minimum period of imprisonment in cases of conviction may be examined".

212. The majority appear to be thinking in terms of very high sentences being mentioned on paper and irrespective of the merits of the case, which should be judged only by courts of law, they are thinking in terms of having a provision "if the courts are averse to awarding imprisonment". *In my humble view these matters regarding offences to be committed by the citizens of the country should be left to be judged under the relevant provisions of the Indian Penal Code by the courts of the country and there should be no interference created by legislation through the taxing statutes.*

213. Regarding the question of compounding offences, the majority have recommended that while they do not suggest withdrawal of powers to compound offences provided under the Act, they do feel that such powers should be exercised only in exceptional cases and not as a matter of course. Here also I respectfully differ. *I am of the view that unless the cases warrant prosecution with a full chance of success, the Department should think in terms of collecting a money penalty or a money amount by way of compounding.*

214. There is a recommendation by the majority to the effect that the provisions of section 28(4) of the Income-tax Act and the corresponding sections of the other direct tax acts should be deleted. They have further recommended that in all cases of deliberate concealment where there is sufficient evidence, the Department, as a rule, resort to criminal prosecution. ***It would be impossible for the Department to collect the money penalty if the relevant provisions as now contained under Section 28(4) were to be deleted. The existing provision reads as under:—*

"No prosecution for offence against this Act shall be instituted in respect of the same facts on which a penalty has been imposed under this section".

I, therefore, recommend that this suggestion of the majority be not accepted. As regards the second part of the recommendation of the majority I invite attention to my observations in paragraphs 196 and 202 to 212 (both inclusive).

Abetment of tax evasion

215. The majority have recommended that a provision similar to the one contained in the Income-tax (Amendment) Bill, 1951 should be introduced in all the Direct Taxes Acts at the earliest opportunity. I am reproducing this clause of the Bill for a ready reference as it appears that the relevant clause has not been reproduced by the majority:—

"53. INSERTION OF NEW SECTION 52A IN ACT XI OF 1952—
After Section 52 of the Principal Act, the following section shall be inserted, namely:—

'52-A. Abetment. If a person abets the commission of a default or the doing of anything by another person whereby the other person is rendered liable to prosecution under section 51 or section 52, the person abetting shall on conviction before a magistrate, be punishable with the punishment provided for the offence abetted.'

While I am in agreement with the proposition that abetment of such an offence should be punishable, I hold the view that it is futile to launch a prosecution against the alleged abettor before the charge is established

****Vide para. 2 of letter, dated 30th November 1959, from the Chairman of the Committee printed at the beginning of this Report.**

against the first offender. It would be good defence for the alleged abettor to say that the question of abetment cannot arise unless and until the charge against the main culprit is established and sustained finally. *In this light the question of taking any proceedings against an abettor should be considered only after such a charge has been established. It should also not be as if the abettor is punished while the main culprit is let off or dealt with lightly.*

Declaration by Tax Representatives

216. On the ground that it would be difficult to obtain sufficient evidence to establish the fact of abetment, the majority have recommended that tax representatives should give a declaration in a prescribed form about the correctness of the returns submitted by their clients. It is the view of the majority that such a responsibility should be put on tax representatives with a view to help the maintenance of a proper code of professional conduct amongst tax representatives. This is a totally different approach from the one made by the majority themselves in the finalised report and such a different approach emanates from the chapter now submitted to me for inclusion in the report. I am not able to understand how a requirement to certify something can ensure the maintenance of a proper code of professional conduct by a tax representative. It is in the exercise of his duties and the certification of particular matters that the responsibility arises but to say that an additional requirement to be foisted on tax representatives would enable the maintenance of proper disciplinary standards is something unusual. A man of correct ethics would conform to all the requirements of his profession. The disciplinary action at the hands of the respective authorities of the legal and the accountancy professions fully ensures the position in this behalf.

The majority have stated that in the United States of America the person preparing a taxpayer's return also must sign a declaration in the terms mentioned by them. In the first place I must point out that *the position obtaining in the United States of America is totally different from the one obtaining in our country inasmuch as in the United States of America there is a self-assessment system where only a test check of the returns submitted is made by an audit and there is no scrutiny in each and every case as it obtains in our country. Obviously, therefore, to base our system on the position obtaining in an altogether different context is not correct.* I would like to quote the provisions of the Code and the Regulations of the Internal Revenue Code of the United States of America:—

"Sec. 6061. Signing of Returns and other Documents

Except as otherwise provided by sections 6062 and 6063, any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary or his delegate.

"Sec. 6062. Signing of Corporation Returns

The return of a corporation with respect to income shall be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly

authorised so to act. In the case of a return made for a corporation by a fiduciary pursuant to the provisions of section 6012(b) (3), such fiduciary shall sign the return. The fact that an individual's name is signed on the return shall be *prima facie* evidence that such individual is authorized to sign the return on behalf of the corporation.

Sec. 6065. Verification of Returns.

- (a) *Penalties of Perjury.*—Except as otherwise provided by the Secretary or his delegate, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.
- (b) *Oath.*—The Secretary or his delegate may by regulations require that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be verified by an oath. This sub-section shall not apply to returns and declarations with respect to income taxes made by individuals."

As to returns made by agents, the following comments contained in the Volume relating to Regulations on the Law of Federal Income Taxation (Mertens) clarifies the position beyond doubt:—

"Sec. 6012—(5) *Returns made by agents.*—The return of income may be made by an agent if the person liable for the making of the return is unable to make it by reason of illness or continuous absence from the United States for a period of at least 60 days before the date prescribed by law for making the return. However, assistance in the preparation of the return may be rendered under any circumstances. Whenever a return is made by an agent it shall be accompanied by the prescribed power of attorney, Form 935, except that an agent holding a valid and subsisting general power of attorney authorizing him to represent his principal in making, executing, and filing the income return, may submit a certified copy thereof in lieu of the authorization on Form 935. The agent, as well as the taxpayer, may incur liability for the penalties provided for erroneous, false, or fraudulent returns. For a return of an agent for a non-resident alien individual, see paragraph (b) (6) of this section. For the requirements regarding signing of returns, see S.1.6061-1."

The requirement for the verification to be made by the person who actually prepares such a return of income relates to the person in the employment of an assessee or in the organisation of an assessee. It is also pertinent to observe that the declaration reproduced by the majority relates to the preparation of a return for and on behalf of the corporations where the persons holding fiduciary positions in corporations have to prepare and verify such returns. The verification in the other cases is of a simpler character and reads as under:—

"I prepared this return...and that this return (including any accompanying schedules and statements) is to the best of my knowledge and belief a true and correct complete return based on all the information relating to the matters required

to be reported in this return of which I have any knowledge."

In this connection I should like to point out that the agents when they prepare the returns and give the verification, also ensure that they qualify the position in clear terms. This is so because it would be a rare case indeed for the agent to have any personal knowledge of the facts behind the figures supplied to him by the taxpayer. The qualification which takes place in the United States has normally two alternatives as under:—

"I have prepared this return for the taxpayer upon the basis of information supplied without independent audit or verification and have no cause to believe that it is not true and correct return."

or

"computed without audit or verification".

Even in cases where the accounts are audited, it would be difficult indeed for any agent to certify that the income reflected in the books of account or in the return is all the income of an assessee or it is a full statement of his income from all the sources and the person who audits accounts may not necessarily be engaged for tax matters.

The majority have also quoted the position obtaining in Australia and have actually borrowed the form obtaining there.

- (1) What books of account, if any, are kept by or on behalf of the taxpayer?
- (2) By whom are those books of account kept?
- (3) Are those books of account audited each year? If so, by whom?
- (4) Is the return in accordance with those books?
- (5) If the return is not in accordance with those books, on what basis and upon what information has the return been prepared?
- (6) Have you satisfied yourself, and, if so, how, that the books of account, or other sources of information upon which the return is based, are correct and disclose the whole of the assessee's income, wealth, etc., from all sources?

The first 5 items are mere statement of particulars or information and it is only item (6) which is material for consideration from the view of the approach made by the majority. *It is a question whether any representative may be in a position to fathom into the real position of an assessee, where the assessee may choose not to disclose all material particulars to the representative. It would be difficult indeed for him to make a bald statement that the books are correct, and disclose the whole of the taxpayer's income from all sources. It is only the taxpayer who can say this and if he does not disclose all the particulars, it would be impossible for an authorised representative to make a mention in this behalf.* The majority observe that these objections are not well-founded. According to them all limited companies are already required to have their accounts audited and the auditors have to give a fairly comprehensive report as indicated in Section 227 of that Act. They have also referred to the scheme for compulsory audit for cases of business income over Rs. 50,000 and they further observe that in cases where the representative or the adviser has not satisfied himself about the correctness of

the return and the books of account and other sources from which the return was prepared, he can quite clearly say so. In this light they have recommended the adoption of the declaration form.

I may, in this connection, invite attention to the observations made by the majority themselves that even in company cases concealments and frauds have been detected. I also invite attention to my observations in this memorandum in connection with the suggestions for a compulsory audit. I would reiterate the position that cases of non-companies ~~were~~ *altogether on a different footing from those of companies and even in the case of companies the returns would be prepared on the basis of the information contained in the books and reliance would have to be placed on the certification to be made by the persons holding fiduciary positions in companies.* In any event, the return would be at best a return in conformity with the books and one can never say with a degree of accuracy that the return shows the correct income. Again, there would be cases where authorised representatives would merely represent the cases and not be concerned with the examination of books. There may be other cases where the authorized representatives may merely give photographic reproductions of the profit and loss account and the balance sheet. In view of this analysis I fail to see how responsibility can be cast on an authorised representative and what advantage *can* flow from the suggestion made by the majority. I, therefore, respectfully dissent from the recommendation of the majority in this behalf and recommend that their suggestion be not accepted.

Voluntary Disclosure Scheme

217. I am glad to note that the Committee as such has rejected the suggestion to revive the scheme for voluntary disclosures. I do not agree with the finding of the majority that there was a widespread demand from Chambers of Commerce and Trade Associations that a scheme similar to the one launched in 1951 should be introduced. On the other hand such a demand came from particular places. Responsible chambers of commerce and industry in the country clearly mentioned the fact that the revival of such a scheme would amount to putting a premium on tax evasion. It is interesting to analyse as to how the scheme worked at different places. A representation was made by some chambers to the effect that it was not administered and worked in the spirit in which it was formulated originally. They had observed that in a number of cases the disclosure statements had not been effected with that measure of consideration which would be required for a vital matter like this. The same complaint had been made about the settlements effected even after the date for voluntary disclosures had expired. It was also felt that in certain quarters the implementation of disclosures scheme and the settlements may have not been on a uniform basis and while some assesseees have been able to discharge their liability quite lightly, others have been made to pay heavy penalties. It was therefore necessary in the context of things pertaining to the matter that this Committee was requested to go into the data relating to this matter critically and find out the exact position obtaining as regards the various disclosures made and the settlements effected.

218. The information given by the Central Board of Revenue in two tabulated statements, one relating to the disclosures in respect of pre-22-10-1951 disclosure cases and the post 22-10-1951 cases is of considerable interest. These tabulated statements are reproduced below for a ready reference:—

DISCLOSURE AND DISPOSAL OF DISCLOSURES STATEMENT UP TO THE MONTH OF MARCH 1959

In respect of pre 22-10-1951 disclosure cases

Commissioner's charge	No. of cases	Income involved (000)	No. of cases Settled	Income (000)	Cases settled			
					Tax Demand (000)	Penalty (Demand) (000)	Tax paid (000)	Penalty paid (000)
	1	2	3	4	5	5(a)	6	6(a)
1. Assam	8	1,597	8	1,591	310	16	310	16
2. Bihar and Orissa	283	22,028	283	27,803	3,780	10	3,666	8
3. Bombay (City I)	258	22,000	258	22,000	5,730	129	5,256	129
4. Bombay (City II)	504	28,193	503	28,092	6,785	98	6,530	98
5. Bombay (North)	1,794	40,244	1,794	42,165	4,151	48	4,147	48
6. Bombay (South)	148	3,511	148	3,246	423	25	413	25
7. Bombay (Central)	13	1,628	13	1,445	297	..	297	..
8. Calcutta	1	300	1	200	59	..	59	..
9. Delhi	844	20,500	833	18,813	4,372	68	4,276	43
10. Hyderabad	1,888	24,428	1,887	24,067	3,861	111	2,623	64
11. Madhya Pradesh	191	12,139	190	11,836	1,868	11	1,851	9
12. Madras	1,287	21,923	1,287	29,211	4,649	79	4,345	44
13. Mysore T/C	146	3,551	145	4,368	378	6	373	6

14. Punjab	768	17,390	768	16,788	1,891	5	1,891	5
15. Ut ar Pradesh	6,393	96,179	6,393	93,809	10,056	18	9,481	18
16. West Bengal	353	68,061	352	69,009	24,652	560	17,053	258
17. Kerala	415	9,081	415	10,754	2,163	2	1,876	2
Total	15,294	3,92,763	15,278	4,05,137	75,425	1,186	64,447	773

DISCLOSURE AND DISPOSAL OF DISCLOSURES STATEMENT UP TO THE MONTH OF MARCH 1959

In respect of post—22-10-51 Disclosure cases

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Commissioner's charge	No. of cases	Income Involved (ooo)	No. of cases Settled	Cases settled				
				Income (ooo)	Tax (Demand) (ooo)	Penalty (Demand) (ooo)	Tax paid (ooo)	Penalty paid (ooo)
1. Assam	71	11,322	71	10,566	1,609	809	1,537	809
2. Bihar and Orissa	763	79,218	763	81,982	5,803	21	5,458	18
3. Bombay (City I)	156	21,996	155	19,321	5,442	115	4,991	115
4. Bombay (City II)	455	38,062	453	37,860	9,363	1,024	7,304	933
5. Bombay (North)	181	13,881	181	14,464	2,576	126	2,552	126
6. Bombay (South)	50	2,801	50	2,844	563	22	467	11
7. Bombay (Central)	7	2,663	7	2,663	664	108	664	109
8. Calcutta (Central)	12	15,099	12	16,328	3,413	126	1,988	120
9. Delhi	23	2,060	20	1,312	362	..	362	..
10. Hyderabad	122	1,682	122	1,354	154	18	132	..
11. Madhya Pradesh	73	4,707	72	4,476	909	49	718	49
12. Madras	184	1,532	184	1,438	167	..	167	..
13. Mysore T/C.	17	888	17	1,198	175	3	156	..

14. Punjab	75	2,197	75	2,157	280	20	280	20
15. Uttar Pradesh	902	13,686	902	13,220	1,527	3	1,352	3
16. West Bengal	2,567	2,02,708	2,511	1,99,334	31,298	1,306	26,000	649
17. Kerala	39	1,543	39	1,677	488	26	436	16
Total								
	5,697	4,16,045	5,634	4,12,194	64,793	3,776	54,564	2,981

219. It will appear from the information contained in the tabulated statements that the maximum number of cases for the pre-22-10-1951 period relates to U.P. The amount of tax demand was Rs. 1,00,56,000 against which the tax paid is stated at Rs. 94,81,000. It is significant to note that the penalty amount is just Rs. 18,000 working out approximately at .2% of the demand and the tax demand works out at about 11% on income assessed. In the case of the Punjab the number of cases stands at 768, the tax demand at Rs. 18,91,000, tax payment being for the same amount while the penalty stands at only Rs. 5,000 which gives a percentage of .3% the tax demand bearing about an equal percentage. The number of cases for Bombay (all charges) aggregates to 2717 and the tax demand in respect thereof stood at Rs. 1,73,86,000, the collection standing at Rs. 1,66,43,000. The penalty imposed was of the order of Rs. 3,00,000 giving a result of about 2%, the tax demand in relation to assessed income standing at 18%. For post—21-10-1951 cases, the prime place goes to U.P. for the meagre amount of penal imposition which works out at .2%, for West Bengal it works out at 4.2% while in the case of Bombay (all charges) it works out at 7.5% while the respective percentages of tax demand in relation to income are 11.5%, 16% and 24%.

The above analysis presents a picture which confirms the position visualised by organized chambers of commerce whose representation has been quoted above. The analysis fully justifies the view that the voluntary disclosure scheme should not at all be revived.

Suggestions to amend the Law

220. The majority have thought fit to suggest very vital changes so far as the assessments of charitable institutions are concerned. I indeed feel quite sad at the approach made by the majority because the matter was not at all referred to the taxpayers and others concerned at any stage. The majority have opined that the existing provisions of Section 4(3) (i) of the Income-tax Act contains certain loopholes which help the formation of pseudo charitable trusts. They have further assumed that accumulations being under the full control of the trustees would be utilised in the businesses of the donors. In another context, while discussing the question of having a separate direct taxes board, an observation is made to the effect that in the absence of the matter having been discussed with the persons concerned and without having a proper examination it would not be correct to make a positive recommendation in that behalf. And for this matter the majority have considered it appropriate to include in the recommendations an issue which was never hinted to the persons who would be affected thereby. It is a vital change that is being suggested and it was therefore but appropriate that a change like this should not have been contemplated without the necessary background and without the necessary evidence as also the views of all concerned being placed before the Committee for a rational consideration.

221. I do not know why it should be presumed that most of the charity trusts accumulate moneys and invest such monies with the objective of having a control over their industrial concerns. The judgment quoted by the majority would be a solitary instance. The majority have gone to the extent of recommending that an investment of more than 5% of the paid-up capital in an undertaking would preclude the charity from getting exemption in respect of the dividends or share income from such investments. Even if there be some rare instances, there would be no justification or reason for depriving in a wholesale manner thousands and thousands of charitable trusts from the rightful exemption which they

enjoy and I fail to understand how a holding in excess of 5% but less than 50% can create a controlling interest. In a number of cases it is only by accumulating the income that bigger charity schemes have come into existence and the huge educational, medical or other relief organizations which we find functioning so well in the country would not have come into existence at all had it not been for the fact that trustees concerned showed imagination and spent amounts on institutions which have given real help to the social fabric of the country as a whole. I also do not concede the fact that investment in concerns managed by the trustees is something unhealthy. If the concerns are well managed and they yield proper dividends the trustees would be making only a suitable investment for the benefit of the charity. The majority have also recommended the withdrawal of exemption where there is an accumulation of income beyond 25%. I have already referred to the beneficial aspect of accumulation and the creation of really good and big institutions.

222. Under the Bombay Public Trusts Act, the Charity Commissioner possesses the power of making an enquiry into the affairs of a charity trust and there have been cases where, with his consent, accumulations extending to a period of years have been allowed to be made for the purpose of carrying out really good schemes. Under that Act, there is a provision for a compulsory audit of the charity accounts and the solution therefore lies in recommending a uniform legislation for charity Trusts for the whole of India. The suggestion now made by the majority that the audited accounts should be the basis for claim for exemption is not intelligible. It is not the audit of accounts that can secure exemption but vitally it is the set up of the charity trust itself as to whether it is entitled to exemption under the law of the land that matters.

223. As regards the recommendation of the majority that where the property of a charitable trust is being misused by the trustees or utilised for his personal benefit or for the benefit of his family, exemption should be denied to the trust. As such, I can say that this is basically a wrong approach because the person required to be dealt with is the person managing the affairs of the charity and for his misdeed there is no reason why the charity itself should suffer. If a trustee for a charity derives any undue benefit it is he who should be taxed for the equivalent of the advantage which he secures from the trust and there should be no adverse effect left on the charity. The correct remedy is to take proceedings against the trustee and when any citizen can be a relator there is no reason why the State through a charity commissioner or through the advocate general of a particular State should not take suitable action to set matters right.

224. While reiterating my submission that the whole matter has been thought of without any opportunity being given to the interests concerned to make their comments and there is no evidence before, the Committee to justify the findings of the majority, I recommend that this suggestion be not accepted and the position relating to charities be not at all disturbed. The other remedy of suggesting a uniform legislation for charities for the whole of India may be considered instead.

Co-operative Societies.

225. I would make a more fundamental approach to this matter and, therefore, I recommend that exemption to co-operative Societies should be granted only if the set-up of the Society answers the concept of a mutual body and such concession should extend only to the extent of

mutual activities subject to administrative arrangements which the Committee have recommended for mutual bodies and the exemption should not extend to any other societies or to any other activities of such societies.

Publication of Declared Income, Wealth, etc.

226. *The majority have stated ultimately that there are two views and, having stated the two views, they have left a final decision to Government. So far as I am concerned, I have dissented from the suggestion for a publication all along.*

227. *The reasoning given in the relevant portion of the observations of the majority is that such a practice of publishing names with assessee's figures is already being followed in several countries. It is stated that in Sweden, though the Income-tax law itself does not permit the publication, every citizen is required to declare his income when he gets himself registered under the National Registration Law which is necessary for social security purposes and this register is open for free inspection by members of the public during specified hours and even private publishers are extracting this information from the register and publish lists of persons with incomes for the purpose of trade directory, advertisements, etc. The majority have also stated the position with regard to Norway and Italy, and they have also referred to the position in France. I should like to state in this behalf that no material was placed before the Committee at any stage to warrant this findings in respect of the position obtaining in the other countries. Mere notes of the position as explained to exist would be of no use and in the absence of the proper statutory provisions and sufficient indication of the correctness thereof, I would not be in a position to express any opinion as to whether such a position does or does not exist in any one of these countries. Basing conclusions on supposed legislation and supposed positions existing in other countries is a dangerous process.*

228. *The majority have opined that publication of the figures relating to income, wealth, etc., will not lead to intrusion into the private affairs of a citizen and, according to them, the payment of taxes due to the State is not the concern of the individual taxpayer alone, it concerns the nation as a whole. While I entirely agree that the tax collection of the Exchequer is a matter relating to the State, the disclosure of his own income and his own wealth is certainly a matter which relates to him and his private affairs. Another reasoning given by the majority is that if an assessee has declared his income and assets correctly, there is no reason at all why he should be afraid of any attempt at blackmailing him. The objective of the majority is to find out concealments of income by reports being given to Government on the basis of such published figures and I am rather feeling very sad at the majority taking a view that this process will not entail blackmailing. There is also no question of any useful purpose being served because it would be impossible to establish from hearsay and from the comments of blackmailers that a particular assessee who has disclosed particular income and particular wealth is earning more or is worth more.*

229. *The majority have pertinently observed that the Taxation Enquiry Commission which examined this issue are not in favour of any further relaxation of the provisions of Section 54 of the Income-tax Act and while accepting the proposition propounded by the Commission, the majority say that this principle cannot apply with the same force to the income,*

wealth, etc., declared by the assessee. To my mind this is a totally erroneous approach and an approach which cannot give any advantage whatsoever. On the other hand, it would create great difficulties. I may add that the position obtaining in the various other countries is the result of particular conditions in those countries. The countries are small and they have their typical set up. Moreover, the basic data in respect of those countries which the majority have assumed has not been established and as I have already indicated, no material evidence in this behalf was placed before the Committee. One has to be very careful about the information being utilised by blackmailers and taking into consideration the observations made by the Taxation Enquiry Commission, I would stress the issue that informers as a class have to be completely discouraged if a healthy atmosphere has to obtain. I have already observed that such information would not at all prove useful in checking tax evasion. On the contrary, it would open flood-gates of enquiry, undue harassment to citizens, unnecessary probing into the affairs of citizens and a complete exposure of the economic and social fabric of the country to become the target of attention at the hands of unscrupulous persons and blackmailers.

The credit of a businessman is a thin fibre upon which his whole business and enterprise hangs and its complete exposure before the public would throw out of gear the whole economic and social structure in the country and also have its impact on the set up in the country as a whole. Such a position does not obtain in countries like the United Kingdom, the U.S.A., Canada, West Germany, Japan, etc.

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I would strongly urge upon Government to drop the proposal for having any such publication made in our country.

Publication of the names of assesseees penalised

231. The majority have recommended that names of persons in whose cases penalties have been levied for Rs. 5,000 or more for the concealment of income, wealth, expenditure, gift or estate duty, should be published. I respectfully disagree with this recommendation. Such publication should be for cases where the penalty amount is Rs. 50,000 or more, because mere inability to take matters to the highest judicial authority should not result in an adverse position for the taxpayer. Cost involved in pursuing such matters have a definite bearing and, therefore, the amount should be sufficiently high. Further, it is only in respect of deliberate and wilful default and fraudulent concealment for which a money penalty has been imposed that the publication should obtain.

232. The majority have concluded their observations under this chapter by quoting President Roosevelt and the relevant extract refers to the duty of the Congress to remove new loopholes devised by attorneys for clients willing to take an unethical advantage of society and their own Government. Here I would like to reiterate my observations about the first-class controversy that ensued when President Roosevelt described legal avoidance as something unethical. I need not repeat here all that I have stated in the opening portion of my comments on this chapter. As to closing loopholes, I have already expressed my opinion that in the interest of the improvement of administration, it is desirable to completely simplify the taxing statutes and the administrative procedure rather than think in terms of plugging loopholes. As to the duty of the Courts,

**Vide para. 2 of letter dated 30th November 1959 from the Chairman of the Committee printed at the beginning of this Report.

I need not once again stress the issue that the judiciary in this country has preserved a sense of values and maintained a very high level.

233. I cannot conclude my comments on this Chapter relating to Tax Evasion without touching some additional important issues. It is a fact that during the War and during the post-War period a number of companies changed hands so far as the persons controlling such interests were concerned. *Huge take-overs took place and it is a question whether the Department has taken all the action that was necessary in the cases of persons who acquired such huge interests overnight.* At the time such changes took place, the change in the shareholdings would be very apparent and would be quite noticeable. A full enquiry into the question of ownership of the transferees of such shares would have revealed the correct position and would have enabled the Department to pin down responsibility on the persons who acquired such controlling interests in respect of all the shares acquired for which identification of the persons other than the persons acquiring controlling interests was not possible. An examination of the relevant company records and a further followup of the enquiry would have enabled the Department to catch the evaders.

There is a pertinent observation in the report on the organization of the Income-tax Department made by the then Board Member. At page 357, under paragraph 10.94, he stated as under:—

“An analysis of the cases referred to the Income-tax Investigation Commission and those that came up in response to the voluntary disclosure scheme conclusively proves that actually the largest evasion took place in the charges manned by the elite of the Department.... On the other hand, there is far too much of a tendency to cover up inadequate effort under the convenient plea of shortage of staff or lack of adequate training facilities as if both these factors are outside the control of the management of the Department.”

234. *Evasion cannot exist to a degree without there being corruption. Evasion as well as corruption are equally condemnable but it cannot be said that corruption results because of evasion only.*

235. *Conditions in our country at present moment are such that many people take it for granted that corruption is deep-rooted and has become part of the administration. There is a trend of thought that the evil is so spread and it is spread so wide and deep that it is barely noticeable. Corruption may also be partly due to increased opportunities for the exercise of influence which may or may not bring financial gain. A denial of the position that corruption exists would create in the minds of honest citizens a sense of complete disappointment and despair.*

236. While one may not make an attempt to apportion blame to the taxpayer or the administration any may not think in terms of harping the question of evasion or that of corruption, the fact remains that both the evils require to be dealt with and dealt with severely. It should be the endeavour of all to contribute in routing out the evils, be it the State, be it the citizen. It is for honest elements in society to assert themselves and to bring a sense of introducing ethics in business and to ostracize the evader and the corrupt official. It is for the members of the learned professions to contribute their utmost in this behalf. *But it is the State which can contribute the maximum by encouraging honest taxpayers, by encouraging professional men of integrity and by giving no quarter to the evaders and to unscrupulous persons. Every country faces situations like these and there is no reason why in our country, with a determined effort and with the willing co-operation of all concerned, the objective should not be achieved.*

CHAPTER VIII

ADMINISTRATIVE ORGANIZATION

General Observations.

237. As regards the question of public criticism and its effect on the moral of the personnel of the Department, I would say that a loyal administrator owes a debt to the State to discharge his duties without fear or favour and there is no reason why the administrator should shirk responsibility and avoid taking decisions. If a situation like this does exist, I can attribute it more to the interference by higher authorities. If that interference is not there and the discretion and independence of the officers is not undermined, a difficult position may not arise. In this connection I have made more detailed observations while discussing the set-up of the Inspecting Assistant Commissioners.

238. *It is also pertinent to observe that loose and unwarranted criticism of the learned professions creates a sense of utter dismay and if that be the position, one can well understand the fear of honest assesseees who are included in the General class and at times a whole class, i.e. the business community is liable to be called as a collection of evaders.*

Separate Board for direct taxes.

239. I should like to comment on the recommendation in this behalf from a different angle. As I have already indicated elsewhere, matters like these, which have never been referred to for a specific discussion in the questionnaire or mentioned to the witnesses, should not be decided without the necessary material being collected and examined. For this particular matter, the views of all concerned in the administrative set up at the Centre are very material for consideration. The question of financial implications also requires to be examined. *I would, therefore, say that a final decision can be taken only after such views are ascertained and examined and the financial implications are also weighed. As a general issue, it would be correct to think in terms of having a separate Direct Taxes Board to ensure homogeneity and better working. In any event, a final view can only be expressed on the basis of full data and after taking into consideration the financial implications.*

Appellate Commissioners.

240. I should like to make additional observations regarding the creation of these posts. There is a view held that the institution of such Appellate Commissioners is not necessary. *On a proper consideration, I am not able to visualize the type of work which these Commissioners would do. It should not result in such Commissioners diluting the healthy set-up of the bifurcation of the Executive and the Judicial functions. I would, therefore, recommend that these aspects may be examined and such posts of Appellate Commissioners may be created only if the utility value is shown and the set-up is such that they also function under the Law Ministry. If the idea is to secure a proper set-up, the objective*

could be achieved by having the link of the Appellate Assistant Commissioners with the Law Ministry through the Appellate Tribunal.

Inspecting Assistant Commissioners.

241. I have already made some general comments with regard to the Inspecting Assistant Commissioners while discussing the general question of Group Assistant Commissioners' charges in my comments relating to the Tax Evasion chapter. *Very strong feelings are held by all classes of taxpayers about the undue interference caused by a good number of such Inspecting Assistant Commissioners. There have been instances where they have actually dominated over the assessing Income-tax Officers.* In one particular case, the matter assumed such significance that proceedings were taken against an innocent Income-tax Officer although the real fault could be attributed to the Inspecting Assistant Commissioner. The result was that the official lost all chances of his promotion and though he was fully and very honourably exonerated later on, his career was marred. *There are a number of instances where instructions are given verbally and the Income-tax Officers, unless they possess full independence to insist on such instructions being given in writing, may submit to such verbal instructions entailing all incidental results.*

242. While speaking on the Income-tax and Business Profits Tax Amendment in the Constituent Assembly in 1948, Pandit Thakur Das Bhargava observed as under:—

"There is the Income-tax Officer and above him is the Inspecting Assistant Commissioner and then there is the Commissioner. What is this Inspecting Assistant Commissioner? You fully know it—I need not describe, but I once described him in this House an invisible ghost he never appears before the assessee, the assessee never appears before him. He directs the Income-tax Officer to assess the man in the absence of the assessee and he pulls the wire from behind and manages the whole thing. The papers will go above with his recommendation. He is already more than satisfied for, in fact, he may have initiated the move or been its efficient cause. Suppose the reasons are not given, will anybody care to go into the question? Will the Honourable the Finance Minister be able to go into the question whether the reasons are good or bad. And suppose he gives the certificate as a matter of routine as such certificates are always given? First of all, the matters are discussed at high level with the Commissioner and then the report goes saying, "For reasons recorded I am satisfied..." He does not give any reasons. Where is the safeguard? Will anybody care to look into it? Will any judicial officer look into it? After all, we know that children, nations and departments have very little conscience. Therefore, as routine work this certificate of satisfaction will be given as a matter of course and it will not be a proper safeguard.

The whole scheme of the Act seems to be that the honest assessee should be protected but in practice he will not be protected. In fact, I am not satisfied with the report of the Investigation Commission when they state that though they have sympathy with the honest assessee, yet the fact that escape of income is there whether honest or dishonest and therefore they must proceed against the honest assessee also in the same way. I differ from the Commission that in case it is

ultimately found that the assessee has been charged more than what he should have in fairness been charged, the refund should not be allowed. I have not been able to understand why the refund cannot be made. When there is no tax evasion, and a person has been over assessed, they look at the question from the fiscal point of view, and not the human point of view, of the assessee. I therefore beg to submit that in my humble opinion the safeguards provided are not enough. I would have liked if the real position is taken into consideration and safeguards introduced."

In his Minute of Dissent to the Report of the Select Committee on the Income-tax (Amendment) Bill, 1952, he observed as under:—

"There is no objection to the issue of any general instructions a copy of which may be placed on the file and which may be available to every assessee. The Appellate Authority can also easily take note of such instructions but these words sanction and authorise the issue of any secret instructions in respect of individual assessee to the Income-tax Officer. These instructions may even be oral or even if they are in writing, the assessee need not necessarily be apprised of their existence, and the Appellate Authority also may never come to know about them.

The most fundamental cannon of justice is before you pass any order against any person, you must first apprise him of the facts and then hear what he has to say in his defence. This fundamental axiom of justice is violated by the issue of such instructions at the back of the assessee who may not even know the ground or background of the issue of such instructions in his case. It has been said that such instructions sometimes favour the assessee.

It may be so in some cases but it is not rare to find that instructions to the detriment of the assessee are given by higher officers specially Inspecting Assistant Commissioners to the Income Tax Officers without the assessee ever coming to know that the Income Tax Officer's judgment was an inspired one. In fact, it is a misnomer to call such an inspired judgment as the judgment of the Income-tax Officer. The assessee in such a case feels as if he has been stabbed from behind by some individual and he can never get confidence in the rightness of the decision of the Income-tax authorities. *Such a course is also unfair to the Income-tax Officer who loses his initiative and finds his intellect mortgaged to some higher officer. In cases when he does not agree with the point of view of his superior officer he has to perforce pass an order against his will. I think no oral instructions should be allowed to be given in the case of individual and every instruction to the detriment of the assessee must be put on record in black and white. It is simply revolting to find that the assessee is not brought face to face with the Inspecting Assistant Commissioner and he is not afforded an opportunity to explain circumstances which weigh against him in the mind of the Inspecting Assistant Commissioner or some higher officer. One's sense of fairplay and justice is not satisfied when one has to countenance a state of things in which orders can be passed without hearing the person*

against whom these orders are made in secret and behind his back. Many complaints are made by unknown people against the assessee and enquiries are also made without the assessee knowing anything about them. If the assessee is not told about these and the higher officials or Assistant Inspecting Commissioners get impressions about particular assessee without giving the assessee any chance of removing them nothing but injustice may result in many cases. It is, therefore, in my opinion absolutely necessary to create confidence among the people that it should be ruled that no order to the detriment of any assessee should be passed as a result of instructions or otherwise by the higher officers unless they are pleased to hear the assessee and no Income-tax Officer should give effect to any such secret instruction unless he affords an opportunity to the assessee to hear what he has to say. In proper cases he can take the statements of the assessee and send the same to the higher officials for consideration. The assessee cannot even urge in appeal anything against such secret instruction as he is not supposed to be apprised of them. This kind of ghost assessment is not only unjustifiable and annoying but is extremely unjust and should not be countenanced. Therefore, the rule should be changed and it must be insisted that the assessee is apprised of such instructions and is heard about them."

243. *It is of paramount importance that the independence and judgment of an Assessing Officer should not in any way be fettered. As I have already stated elsewhere, there should be no objection to his getting the necessary guidance in matters where he finds a difficulty. But the initiative must come from him. I have advocated a proper functioning of the Inspection Branch which should be completely detached from the administrative set-up. The inspection work should be carried out fully and it is in the context of such inspections and the enquiries made that a proper check on the work of the officer would be exercised. The Commissioner may call for cases at random but the purpose should be to give a sort of corrective guidance and the attempt by the Assistant Commissioner or the Commissioner should not be of such a nature that the fundamentals relating to the assessment matters are actually regulated by them or under their instructions. In the light of these observations, I strongly recommend that the inspection and administration work should be made separate and the administration work, including the guidance and supervision by random check should be exercised by the Commissioner and a limited number of Administrative Assistant Commissioners.*

244. As regards the question of assessments being made by Assistant Commissioners, I have already offered my observations while discussing the Group Assistant Commissioners' charges in my comments relating to the Tax Evasion chapter.

Authority and facility for survey work, etc.

245. I invite attention to my detailed observation regarding the functions of Inspectors in my comments on the Tax Evasion chapter, the scope of their work and the administrative sanction which they should derive. *I am of the clear view that Inspectors should not have any statutory status or powers.*

Prevention of malpractices.

246. The majority have indicated certain figures about complaints of corruption, etc., and have observed that figures of unjustified and baseless complaints cannot give a correct picture of the extent of corruption. *One should not forget that when the citizens deal with questions relating to authorities and persons in power, there are inherent difficulties in the suggestions which they might make.* I would, therefore, invite attention to the general observations made in connection with the relevant matters which I have indicated in my comments relating to Tax Evasion chapter. I also invite attention to my observations relating to this subject in respect of the causes and remedies.

Representation of Assesseees.

247. *The relevant chapter has been so headed as to describe all representatives as tax experts. This is hardly correct. The word "Tax Expert" can never be expected to be used by members belonging to the profession of law and accountancy. It is only persons other than those belonging to these professions who style themselves as either Income Tax Practitioners, or as Income-tax Consultants or as Income-tax Experts. In the approach that the majority have made to this question, they have assumed that the right of Lawyers and Chartered Accountants to handle assessment work and/or appear before taxing authorities, is something bestowed upon the respective professions by the Department. Lawyers and Chartered Accountants have a definite place in the economic and social structure of the country and it is because of this place which they occupy and because of the fundamental rights which they have enjoyed for years and years together and which are now fully secured by the Constitution, that they are entitled to attend to and have a right of representation for tax matters. Whatever may be the position relating to persons who may hereafter be recognised for income-tax practice, without the necessary qualifications, even the existing Income-tax Practitioners enjoy certain rights which cannot be taken away by a stroke of the pen. Therefore, in my humble view, the whole basis on which the matter has been considered by the majority is not sound.*

Question of registration of authorised representatives.

248. The majority have recommended that the admission of the various classess of 'professional experts' to tax practice should be regulated by system of registration with the Department. *I am totally opposed to this suggestion. Practically, all witnesses who appeared before the Committee have opposed this idea and particularly so, so far as Lawyers and Chartered Accountants are concerned. Eminent Lawyers and some Members of the Parliament have also stated that it is not desirable to have registration for members belonging to these two professions. I have already indicated my view that I do not accept the proposition that members of the two professions attend to and appear for tax matters because of something bestowed by the Department upon them. Their right is an inherent one and as I have stated above, they have a definite place in the economic and social structure of the country and as such they claim and are entitled to these privileges. A perusal of the regulations made under the Chartered Accountants' Act will show that tax matters are specifically mentioned while enumerating the functions of Chartered Accountants. The relevant regulation, viz., Regulation No. 78 is reproduced below for a ready reference:—*

"78. *Other functions of Chartered Accountants*—Without prejudice to the discretion vested in the Council in this behalf, a Chartered Accountant may act as liquidator, trustee, executor, administrator, arbitrator, receiver, adviser or as representative for costing financial and taxation matter or may take up an appointment that may be made by Central or State Governments and Courts of Law or any Legal Authority, or may act as Secretary in his professional capacity not being an employment on a salary-cum-full time basis."

Every lawyer has to conform to the necessary requirements as an officer of the Court of Law and he has to observe certain principles and procedures. So far as *Chartered Accountants* are concerned, there are different classifications of Fellow Members in Practice, Associate Members in Practice, Fellow Members not in Practice and Associate Members not in Practice. A full register is published in the *Gazette of India* every year and a full identification of these categories is also indicated. Changes are also notified in the *Gazette of India* and they are regularly published in the 'Chartered Accountant' which is the official organ of the Institute of Chartered Accountants of India.

249. The instances of other countries are given without analysing the correct position. It is in respect of Tax Courts as such that the practice is permitted not only for the members of the legal profession, but also for others. Without having corresponding Tax Courts, for which there is no need at all in this country, the question of regulation or registration on absolutely different premises, should not and cannot arise. Moreover, there are different legislations for different States, both in the U.S.A. and for Australia. Actually, there are separate State Boards even for the profession of Accountancy in Australia. It is therefore not correct to base something on the position obtaining in other countries which is not comparable and further which is not analysed and understood in a proper perspective. Our legislation and procedures are more based upon the laws and procedure obtaining in the United Kingdom where the entire jurisdiction is with the respective professions. In our country there are compact bodies for the profession of Accountancy and for the legal profession. A consideration on the basis of separate and several bodies which obtain in some other countries and in quite a different context, should not be taken as the basis for considering the position so far as our country is concerned.

250. So far as the Income-tax Practitioners are concerned, the Department which has the full authority to regulate them, may have a list prepared, but there is no need of justification for having a registration of Lawyers and Chartered Accountants.

Disciplinary Jurisdiction.

251. In making their general observations relating to this question, the majority have not appreciated the correct position. During discussions I supplied to the Members of the Committee and to the office of the Committee, copies of the Chartered Accountants Act, the regulations made thereunder and two volumes containing reports of the Disciplinary Committee, findings of the Council and judgments of High Courts. The first volume covers the period upto the 30th June 1954 and it, more or less, entirely relates to the work of the Council for the first three years during which period I had the privilege of being its President. A perusal of this volume will at once show that the view taken by the majority

and the observations made by the Income-tax Investigation Commission are not at all justified. Twenty-one cases were inquired into by the Disciplinary Committee and submitted to the Council which, in turn, submitted the papers including the findings to the respective High Courts. It is significant to note that 13 out of these cases were complaints or information by non-Government agencies, and eight complaints were either by the Central Government or State Government of which there was one solitary case relating to the Income-tax matter. I may pertinently observe that the findings given by the Council were sustained by the High Courts in each and every case, except for the solitary matter relating to the income-tax case where the Council found the Member guilty, but it was the High Court which exonerated him, and the case was not taken to the Supreme Court of India by Government.

252. In the Second Volume of the disciplinary cases, 9 cases are reported of which 7 are from non-Government agencies and only two from the Central Government or a Department of the Central Government and of these two cases none related to income-tax. Here also it is significant to note that the findings of the Council were upheld by the respective High Courts.

253. It will appear from the above analysis that the Council has taken an appropriate view in each and every case and such decisions of the Council have been invariably upheld by the respective High Courts.

254. I may also mention that the Council from the very beginning has been very particular about maintaining the highest ethical standards and its attitude has been more towards strictness than towards leniency as can be seen from each and every case reported upon in this volume and the judgments given by the various High Courts.

255. With this background of the matter, it is rather disappointing to find that there should be loose criticism—criticism which is not at all warranted.

256. I can, naturally, therefore, not support the proposition of the majority that it is necessary to have some measure of control over all classes of tax representatives. And obviously the majority think in terms of a control over Lawyers and Chartered Accountants as well. So far as the legal profession is concerned, although I cannot claim personal knowledge, I can certainly say that standards have been preserved at a high level and although moral standards throughout the world have deteriorated and their impact has been seen in our country in all spheres, the fact remains that it is because of the judiciary in this country, its independence and integrity that we have been able to maintain high values so far as justice is concerned. As to chartered Accountants I have given a complete analysis of the exercise of disciplinary jurisdiction which completely establishes the position about the most proper exercise thereof by the Council.

Association of Departmental representatives in disciplinary enquiries.

257. Quoting the analogy of the position obtaining under the Chartered Accountants Act, the majority have recommended that the standing Counsel of the Department should be coopted as a member of the Bar Council for disciplinary inquiries against members of the legal profession. On a proper consideration of the matter, I have come to the conclusion that this suggestion is not practicable, nor is it justified. Members of the

legal profession can be dealt with only by Courts of Law and it is a question whether the respective Bar Councils or bodies having disciplinary control for the members of the legal profession would at all welcome the idea. The peculiar position obtaining under the Chartered Accountants Act has a historical background. In the Bill that was introduced in the Parliament, clause 20 differentiated between income-tax cases and non-income-tax cases and it was then suggested that enquiry relating to income-tax cases should be conducted only by Government. Strong opposition was voiced by the members of the profession and on a number of occasions I had personal discussions with the then Finance Minister and the then Commerce Minister. It was only as a result of a prolonged discussion with the Honourable Finance Minister that I was able to impress upon him the need for doing away with such differential clause in the Act and ultimately he appreciated the view which I was propounding and the result was that the position for the Accountancy profession also was put on par with that of the legal profession. As a matter of assurance and satisfaction to the Central Board of Revenue a gesture was made for including a member nominated by Government in the Disciplinary Committee. But I must point out the other background relating to the matter as well. The Accountancy Expert Committee had made a positive recommendation to the effect that the nominated element should, in course of time, disappear and an assurance to that effect also emanated from the proceedings of the then Indian Accountancy Board. It was but to be expected that in course of time the nominated element would disappear. But things have taken a different shape in the general set up of the country itself and various institutions working in it. It has been thought fit to impose restrictions and to have a sort of a further 'control' over autonomous bodies. Under the last amendment to the Chartered Accountants' Act, the number of nominated members has been increased by one. This addition may possibly have a relation to the other suggestion which the majority have made to the effect that it must be the representative of the Central Board of Revenue who should be on the Disciplinary Committee, and none other. Previously when the Institute of Chartered Accountants of India was attached to the Ministry of Finance, there was apparently no difficulty. But after its transfer to the Ministry of Commerce, a view possibly appears to have been taken to the effect that it is the Commerce Ministry that will make the nomination. Thus it is more a departmental question or a question pertaining to the relations of one Ministry with another. I do expect that matters can be resolved by an understanding between the Ministries and there should be no reason for an outside agency, or at least a Committee like this, to redress matters. Having said this, I would rather advocate that Government should re-examine the whole matter and think in terms of reducing the number of nominated members and do away with such nominated element in course of time and the question of having a direct nominee on the Disciplinary Committee also may be reconsidered.

258. I have already indicated my different view regarding the suggestion of the majority that the findings by the respective Disciplinary Bodies of the two professions should go to the President of the Income-tax Appellate Tribunal. I hold the view that such a procedure is not desirable and matters must go to the respective High Courts directly.

Automatic Disqualification.

259. While I fully endorse the view that professional people who are convicted and who are penalised for evasion of taxes, should be dealt

with strictly, the question of automatic removal requires a cautious examination. It may be that in particular instances necessary evidence may not have been adduced and/or marshalled and it may be that in such cases, on a fuller examination, a different finding may possibly emanate. Apart from that, the question of matters involving moral turpitude and those not involving moral turpitude also requires to be considered and dealt with separately. I, therefore, feel that instead of suggesting a straight jacket scheme for removal, the proper remedy is to have such matters treated as breaches for the necessary examination at the hands of the respective disciplinary bodies, the final verdict being pronounced after filtration of the necessary material by the High Courts.

260. The majority have observed that it was represented to the Committee that some tax representatives aided and abetted tax evasion and in the class of "tax experts" they have bracketed Lawyers and Chartered Accountants as well. Such a generalisation is not justified and the representations made do not speak of Lawyers and Chartered Accountants. The majority have further expressed an opinion that any instigation or aid given by tax experts to assessees in resorting to tax evasion should be considered against the professional ethics and they have referred to a study of the statement issued by the Council of the Institute of Chartered Accountants in England and Wales. *As a professional man I can at once say that for both the professions, instigation or aiding of an assessee in resorting to tax evasion is absolutely unethical and strongest possible view has been and would be taken by the respective authorities on complaints being made in that behalf.* I also do not feel quite happy in the general designation of tax experts being given to all classes of representatives including Lawyers and Chartered Accountants. The quotation of the precedent in the United Kingdom would give an indication that the position in our country is different. With the greatest respect I must point out that there is a lot of difference between the helping of a tax evader and advising an assessee to put matters right and bring in a settlement by a full disclosure. It must be the endeavour of everyone to see that a cleaner atmosphere obtains and this cannot be achieved without allowing a voluntary admission of the escape of income and an opportunity of making good of loss to the State by paying the full amount of tax and starting with a clean slate. There is no reason why a professional man for the purposes of direct taxation should not handle the case of an assessee who wants to put matters right and there might be cases where he may be in the know of matters which the assessee may not have disclosed to him. As to the precedent of the United Kingdom, *I can say from personal experience that in a number of cases professional people coming to know about evasive activities of the assessees and their persistence in such activities have refused to handle their cases in our country.* I wish my learned colleagues had taken due cognizance of this aspect of the matter. I would also in this connection invite attention to my observations relating to the disciplinary enquiries made by the Council of the Institute of Chartered Accountants of India and the position that in practically each and every case the findings of the Disciplinary Committee of the Council were sustained by the respective High Courts. In this light I would say that my learned colleagues have been a bit unkind to the members of the two learned professions in India.

Cost of Representation.

261. There is yet another peculiar finding by the majority to the effect that at times the fees charged by the tax experts in regard to

assesseees in the small income group are as much as and some times even more than the tax leviable on their clients. I do not know of any basic data on which such a finding could be based. In any event, no evidence has been placed before the Committee at any stage as to warrant such a finding. There is another observation by the majority to the effect that a portion of the fees is borne by the Revenue. This, to my mind, is not a correct approach. In many cases the recovery by the State would be much more than the savings that could be effected in the case of the payer.

The question of the fees charged by authorised representatives was discussed fully by the Committee. I would, therefore, like to state the position quite clearly. A recommendation relating to the formulation of proposals for free advice to be made available to assesseees would be perfectly in order. On the other hand, an attempt at the regulation and control of the fees payable to professional people would result in driving out the first-rate talent from practice or, in the alternative, introduce an element of compelled dishonesty to those who would in such circumstance resort to cash methods instead of receiving the fees officially. Professional men who charge fees are capable of charging them because of the service they render to their clients and it is they who with their full integrity account for taxation to the fullest extent. I have made these observations keeping in view the fact that for such an important matter the position should be correctly stated, and I would add that an artificial regulation of fees or their allowance for tax purposes would result in discouraging talent and giving encouragement to intermediaries who would act as go-betweens. On an overall consideration of these matters I feel that the question of paramount importance is whether we want to encourage the honest professional man or we want to bring into existence a class of intermediaries and a class of brokers or a class of persons who resort to cash transactions.

262. The majority have made yet another recommendation to the effect that they strongly disapprove of the tendency of Officers leaving the Department for service in private firms as, in their opinion, it would lead to abuse and even to corruption. Their further view appears to be that there would be a loss to the State of the services of Officers who would have been trained on considerable expense by Government. They have also suggested that Government should take a policy decision in the matter and prevent such employment.

While I readily agree with the approach that a position which results in corruption should be definitely curbed and very strongly curbed, I do not know how employment in private firms as such could be prevented. It is for Government to lay down the terms and conditions of service in such a way that persons leaving the Department or retiring from the Department would be put to a disadvantage if they accepted employment in concerns whose assessments they themselves were handling. The recommendation in this behalf should again be in conformity with the decision relating to the question of practice by retired officials or by officials who leave the Department before retirement, and one cannot say definitely that every officer leaving the Department or retiring from the Department would be joining a private firm whose assessment he was handling or that he would be getting an employment because of the behaviour which he adopted in dealing with particular assesseees when he was an official. Such an approach would cast a grave reflection on honest officials of the Department. Apart from this aspect, one should

also remember that there are a number of cases where the best of talent is drawn away from private service into Government service and the reverse of the position visualised by the majority is also material for consideration. I would therefore say that on a proper analysis of the matter the issue is not one in respect of which a generalisation is possible and, in any event, it is not quite correct to think in terms of preventing employment as visualised by the majority.

263. *I cannot conclude my observations relating to this chapter without mentioning the fact that it is the correct appreciation of values which we so badly want in our country. It is very essential that the place which the professions occupy in the country should stand fully acknowledged and that unwarranted and baseless suggestions should not be made against them. I have given a full analysis of the position as I view it and I do hope that Government, when taking decisions in respect of these matters, will give full consideration to the various issues analysed by me.*

CHAPTER IX

PUBLIC RELATIONS

264. *The approach to the question of public relations should be a fundamental one and it should be an approach of actual practice and not of precept only. The whole lay-out of the taxing statutes, their administration, the contents, the provisions governing all the direct taxes and the procedures laid down should be such that they should speak loudly about the public relations and nurse and foster public relations instead of hindering them.*

265. While discussing the various chapters I have made relevant comments. But I should like to lay emphasis on the fact that I have readily agreed to the provisions for dealing with departmental officers to be so drafted as to leave the initiative and action in the hands of the Central Board of Revenue itself. The laws of the other countries viz., U.S.A., and the U.K. contain specific provisions for dealing with acts of delinquent, corrupt or harassing tax officials at any level. *But in making the recommendation the Committee as a whole thought it fit to leave this initiative and discretion in the hands of the Central Board of Revenue itself because, as I understand matters, this approach was vitally necessary in the interest of nursing and fostering public relations and for that purpose the gesture from the taxpayer of this nature should be there. I am not quite happy about the approach made by the majority in making their recommendation and drawing their conclusions relating to the learned professions, viz., the profession of law and profession of Accountancy. I have made my detailed comments under the Administration Chapter in this behalf. Similarly while full attention has been bestowed upon the question of evasion and tackling, and rightly so, a similar consideration in respect of the administration is not made with that degree of force. It is quite apparent that persons in power are in a much better position and it is the citizens who require to be protected. This aspect requires to be loudly stated and it is particularly so for the honest taxpayer. I cannot do better justice to this matter than quote two Ex-Ministers of the Government of India. In so doing I shall be reproducing a part of the discussions also that took place in the Parliament.*

266. The Honourable Shri T. T. Krishnamachari observed as under:—

"I wish today to touch on one or two aspects of the financial administration of this country, namely the question of administration of the Income-tax department, the problem of prices and inflation. There is a third matter on which I would like to touch if there is time, namely the provisions of clause 4(d) of the Finance Bill on which subject a lot of promises were made last year about this time in this House—promises which, in the usual way, have not been implemented even to a degree.

On this question of Income-tax administration I must say that while many Members of this House and I in common with them feel that the administration should be tightened up so as to avoid evasion by the bigger people, I do not share

the feeling that the administration should adopt a punitive attitude towards assesseees. There is a considerable difference of outlook in the matter of this administration between a country like the United Kingdom and our own country. In the United Kingdom the honest assessee is nursed, so that honesty in the matter of submitting returns is a thing which is more or less rewarded. It often happens in that country that though the scale of taxation is very heavy and does not leave in the case of large incomes a surplus of perhaps more than 6 pence in the pound, it is made worth while for people to earn money because of the allowances that are given in order to help them to earn; so much so that some of the people who earn large amounts, well, think there is a way of life and even though they would not have a surplus it would not matter. On the other hand, in our country we have yet to imbue the Income-tax Department with a spirit that they should approach the assessee, the smaller assessee, the honest assessee, with an offer of help, help him to tide over his difficulties in a correct manner by offering him technical advice where necessary. On the other hand, my experience has been that the honest assessee, the smaller assessee is penalised by vexatious restrictions and harassing assessments—whereas the dues from the large assessee, as is disclosed by my hon. friend Mr. Tyagi today, is compounded for his having cheated the Government successfully over a period of years of the tax that is due from him. And often times I have heard that people who have earned crores of rupees have their dues compounded for Rs. 20 lakhs and are given a period of two, three or four years to pay that money. Therefore, I think that unless at the top the Minister himself takes the matter in his hand and directs his officials to encourage people to submit returns honestly made up and to encourage officials to help these people, I am afraid it will become increasingly difficult for the Government to administer this tax department. For, if one class of people successfully evade taxes I do not think the men with lower classes who have to pay taxes would pay it, at any rate willingly.

Again, there is another matter of the same nature in which assesseees are harassed. A partnership might be recognized by law. Partners might be liable in certain matters for being members of a partnership; they may be liable because they are members of a partnership firm, but the income-tax authorities have got a totally different law for themselves. Often they refuse to recognize the firms; they refuse to register them and even though the legal liability of the partners in respect of the transactions towards the public and business institutions remain, the income tax people refuse to recognize them and they go on assessing one of the partners as an individual arbitrarily.

Another matter came to light the other day. I heard that the Finance Department sent a notification that they proposed to amend the form of return so as to include a provision for assesseees to disclose their non-taxable incomes. After the issue of that notification, the Income-tax Administration in one circle at any rate issued a circular to their assessing

officers that all credits to the account of the assessee must be taxed as income and the assessee must be left to go to a court of appeal and get a redress, if necessary. It may be that I am not able to produce the circular but I have been assured on very good authority that that circular has been issued. What happens? It happens that the Appellate Assistant Commissioner . . .

THE MINISTER OF STATE FOR FINANCE (SHRI TYAGI):

Can the Hon. Member give the approximate date?

SHRI T. T. KRISHNAMACHARI: My hon. friend Mr. Tyagi is new to the Department. If it is possible for us to get the date and the circular, I would exhibit it, but it is rather difficult.

SHRI TYAGI: Did it happen 2 or 3 months ago?

SHRI T. T. KRISHNAMACHARI: I have been told about it on very good authority and my hon. friend must rest content there. If he does not believe me, it is my misfortune.

What happens is that thereafter the matter has to go to the Appellate Assistant Commissioner. Today as things stand, it takes about a year before the Appellate Assistant Commissioner can decide and in nine cases out of ten, the Appellate Commissioner decides against the assessee. In the one case that he decides in favour of the assessee, the Department appeals to the Tribunal. The Tribunal takes about two years to dispose of matters, as the pendency is today. As in matters of law, similar to the one I mentioned either in the case of joint family or in the case of non-recognition of a partnership firm or otherwise, the question will go to the High Court and then to the Supreme Court by reason of the provisions of the Constitution. It happens in the case of a person who is affected, he has got to wait probably 6 or 7 years, before the assessment is finalised spent large sums of money and pay lawyers and that is his reward for being honest. I might also state in this connection that an audited account has absolutely no value in the eyes of the Income-tax Department. *I remember on one occasion a high officer of the Income-tax Department while considering the provisions of a Bill for regulating the profession of auditors said that he cannot recognize their association because he said that he will not recognize an association of shopkeepers as having any particular status. That is the attitude of the Department to audited accounts. That is what I would like to say briefly to the Hon. Finance Minister and if he wants to encourage people to be honest, then I say the honest people must be nursed and unless the outlook of the Income-tax Department radically changes, the category of honest assesseees would undoubtedly become less and less because we are putting a premium on dishonesty by the manner we treat honest people."*

267. The Honourable Shri K. C. Neogy, while speaking on the Income-tax and Business Profits Tax (Amendment) Bill in 1948, observed that Income-tax was the most unpopular form of taxation all the world over. He remembered to have read in a book by that well-known Income-tax

expert Prof. Seligman that in his experience people who would never be considered capable of telling a lie would unhesitatingly put down their signature to a false income-tax return. Therefore, tax evasion was not peculiar to this country. It was an evil that prevailed all over the world in larger or lesser degree. *He stated that we had better look forward to a regime of greater co-operation between the Department and the assessees.*

268. *As I view the matter, it is one of a responsive co-operation and the initiative may as well come from the citizens though it is they who require to be protected. Actually, the honest taxpayer does all that he can to nurse an atmosphere of mutual co-operation and trust. But it is he alone who suffers and he alone can voice in strong terms his feelings. It is the evader, on the other hand, who would be very meek and would try to get out of the situation by apparently looking submissive.*

It is my personal experience that we have the best of people in the Income-tax administrative service. It is all a question of how one approaches the matter; if the attitude of the taxpayer is one of giving the fullest co-operation and submitting the fullest particulars to the Department, I believe the Department cannot but come out with responsive co-operation. But there are over-enthusiastic officers as well who might at times step the bounds of reasonableness and create difficult situations. Amongst the assessee class also there are citizens who have discharged their dues fully and very honestly. There are citizens who continuously evade taxes. Among the learned professions on the whole, as the Committee itself found, the large majority have exhibited complete integrity. There are black sheep everywhere and for the misdeeds of a few, to label the whole community as bad, is not desirable. *We have come to such a position in our country that one should take stock of the situation in a very dispassionate way, and without allowing feelings or sentiments to have a sway, if we all think in terms of contributing our best and nursing methods of integrity and clean practices in all spheres we shall certainly be able to create a better atmosphere. It is not as if a person is above reproach if he happens to be the administrator with power and it is also not true to say that the taxpayer or a particular section thereof, as a class, is bad and wanting in social behaviour. There is a sort of curtain which requires to be torn off and correct values require to be reflected. It is only by doing this that we shall have achieved a cleaner atmosphere not only for the tax administration and collection, but for the country as a whole.*

Submitted at the time of
signing the Report,

G. P. KAPADIA.

The 25th November, 1959.

NOTE.—Appendices to the Memorandum of Dissent, Comments and Recommendations by Shri G. P. Kapadia have not been printed.

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TO THE
REPORT
OF THE
DIRECT TAXES ADMINISTRATION ENQUIRY
COMMITTEE

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